HONG KONG MONETARY AUTHORITY
香港金融管理局

Consultation Conclusions Paper on Implementation of Mandatory Reference Checking Scheme to Address the "Rolling Bad Apples" Phenomenon

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I. Introduction

1. The Hong Kong Monetary Authority ("HKMA") issued a consultation paper on 8 May 2020 on the Implementation of Mandatory Reference Checking Scheme to Address the "Rolling Bad Apples" Phenomenon ("**Consultation Paper**").

2. The three-month consultation period ended on 7 August 2020. The HKMA received a total of seven submissions. The respondents included industry associations, an Authorized Institution ("AI"), a professional body, and the Privacy Commissioner for Personal Data, Hong Kong ("PCPD"). The list of respondents is set out in **Annex 1**.

3. This consultation conclusions paper ("**Conclusions Paper**") summarises the key comments received from the respondents to the Consultation Paper, the responses of the HKMA to those comments, and the revised proposals for taking forward the Mandatory Reference Checking Scheme ("MRC Scheme") to tackle the "Rolling Bad Apples" ("RBA") phenomenon. The revised proposals have taken into account relevant work done by international bodies, local circumstances in Hong Kong, as well as comments from the respondents. As the MRC Scheme is intended to be an initiative to be taken forward by the industry, the revised proposals set out in this paper are subject to further modifications and refinements for implementation by the industry. It is proposed that an industry working group ("IWG") be set up to work out the operational details of the MRC Scheme in accordance with the principles set out in this Conclusions Paper.

4. This Conclusions Paper should be read together with the Consultation Paper. A summary of the major comments received and the HKMA's responses are discussed below. More details on the consideration of the industry's comments are set out in tabular form in **Annex 2** and a summary of PCPD's comments is appended in **Annex 3**.

II. Comments and Conclusions

5. In general, the seven submissions expressed support for the implementation of the MRC Scheme by AIs with respect to their employment of individuals to specified positions, with a view to addressing the RBA phenomenon (i.e. individuals who engaged in misconduct during their employment in the institutions but are able to obtain subsequent employment elsewhere without disclosing their earlier misconduct to the new employer). Respondents have also provided comments on some practical and implementation aspects of the MRC Scheme and sought clarifications on certain areas. In addition to the respondents from the industry, we would also like to extend our appreciation to PCPD for providing valuable comments on the protection of personal data privacy in respect of the MRC Scheme.

6. We have taken into account all the comments received in refining the proposals for the MRC Scheme. Some of the key comments and our responses are highlighted in the paragraphs below, and more details are set out in **Annex 2**, while a summary of PCPD's comments is appended in **Annex 3**.

1. Scope of Personnel to be Covered

7. Respondents generally supported the adoption of a phased implementation approach. They also generally supported the scope of personnel proposed for Phase 1 of the MRC Scheme. Some respondents expressed concern over the wider scope of personnel proposed to be covered in Phase 2 of the MRC Scheme, in particular the inclusion of client-facing staff. They considered that including client-facing staff in the MRC Scheme would induce heavy operational burden on banks and significantly increase the number of employees who will be subject to the MRC process, and such operational impact may not be commensurate with the entailed risks. Some respondents suggested that the scope of Phase 2 of the MRC Scheme be confined to employees who are licensed with financial regulators. In view of these comments, the HKMA has refined the proposal for Phase 2 to extend the scope of personnel covered in Phase 1 to only also cover individuals who are registered or licensed with financial regulators. In other words, the revised coverage of Phase 2, in addition to personnel covered in Phase 1, would be: (i) staff licensed to carry out securities related regulated activities under the Securities and Futures Ordinance ("SFO"); (ii) staff licensed to carry out insurance related regulated activities under the Insurance Ordinance ("IO"); and (iii) staff registered to carry out regulated activities under the Mandatory Provident Fund Schemes Ordinance ("MPFSO"). The inclusion of other roles under Phase 2 can be further considered by the IWG having regard to the experience in Phase 1.

8. Some respondents also noted that the roles of "heads and deputy heads of key supporting functions", as proposed to be covered in Phase 2 in the Consultation Paper, will largely overlap with "managers" under §72B of the Banking Ordinance ("BO") who are already covered in Phase 1. They also noted that there might be interpretation issues on the roles of "deputy heads" given that different AIs may have different job specifications and titles. For simplicity and to avoid misinterpretation issues, the HKMA has removed the roles of "heads and deputy heads of key supporting functions" from MRC coverage under Phase 2.

9. One respondent suggested adding the role of "responsible officer" ("RO") approved under the MPFSO to the MRC Scheme, as roles of similar nature, such as "executive officer" ("EO") approved under the BO and RO approved under the IO, are covered under the MRC Scheme. In view of these comments, the HKMA has added ROs under the MPFSO to the MRC Scheme. Moreover, considering that ROs under the IO and the MPFSO are important roles in AIs who are usually expected to be appointed on a long-term basis,

ROs under both the IO and the MPFSO are moved to Phase 1 of the MRC Scheme.

10. The changes in the scope of personnel covered are summarised in the table below:

Table 1 – Amendments to the scope of personnel

	Original Proposal	Revised Proposal
Phase 1	• Directors[1] • CEs, ACEs[2] • §72B managers • EOs[3]	• Directors • CEs, ACEs • §72B managers • EOs • ROs under IO and MPFSO
Phase 2	• Heads and deputy heads of key supporting functions • Staff licensed or registered to carry out regulated activities under SFO, IO and MPFSO[4] • ROs under IO • Client-facing staff who provide general banking products and services (i.e. bank branch managers, tellers and customer relationship representatives)	• Staff licensed or registered to carry out regulated activities under SFO, IO and MPFSO

1 Refers to directors approved under §71 of the BO.

2 Refers to chief executives ("CEs") and alternate chief executives ("ACEs") approved under §71 of the BO.

3 Refers to executive officers ("EOs") approved under §71C of the BO.

4 Includes staff licensed to carry out securities related regulated activities under the SFO, staff licensed to carry out insurance related regulated activities under the IO (i.e. technical Representatives licensed by the IA under §64Y or §64ZC of the IO); and staff registered to carry out regulated activities under the MPFSO (i.e. subsidiary intermediaries registered with the Mandatory Provident Fund Schemes Authority ("MPFA") under §34U(4) of the MPFSO).

2. Scope of MRC Information

11. Respondents generally supported the proposed scope of MRC information. Most respondents, however, expressed concerns about disclosing ongoing investigations as MRC information. While the proposal as set out in the Consultation Paper provides flexibility for the reference providing AI to decide whether to disclose ongoing investigations taking into account the circumstances of individual cases, most respondents expressed concerns that such disclosure may pose potential litigation risks to AIs, and that it may affect ongoing investigations, in particular those involving regulatory bodies or a suspected offence. Some respondents considered that disclosing ongoing investigations may also be unfair to the individuals concerned. In this connection, some respondents proposed that disclosure should be confined to concluded investigations only. On a related note, some respondents sought clarification on the timeframe for reference providing AIs to provide notifications to recruiting AIs on concluded investigations.

12. In view of the industry's comments, the HKMA considers that the issue of the reporting of ongoing investigations could be further deliberated by the IWG to be established. On the one hand, there are constraints and potential legal implications associated with disclosure of ongoing and incomplete investigations by the reference providing AIs to the recruiting AIs. On the other hand, if all ongoing and incomplete investigations are excluded, it may give rise to a potential loophole for the "bad apples" to resign from the current job once an investigation of their misconduct is started or is about to conclude with likely disciplinary actions, thereby bypassing the MRC Scheme and escaping from the consequences of their misconduct behaviour. The HKMA considers that in principle the reference providing AIs should provide information about ongoing investigations with allegations that are of serious nature as well as those which are about to conclude with disciplinary actions. The MRC information so provided may contain basic information about the allegations and the state of investigation. As the prospective employee will be given an opportunity to be heard, it will be up to the recruiting AI to take into account the information available before making the recruitment decision. This would help strike a balance between mitigating AIs' litigation risks and addressing the risk of hiring "bad apples". The IWG may duly consider the matter and prepare guidance on the types of ongoing investigations that should be included as well as the exemptions that should be applied, for instance due to statutory prohibitions, taking into account the above considerations as well as views of the industry participants. As regards the timeframe to provide notifications of concluded investigations, it is proposed that

reference providing AIs should provide an update to a recruiting AI on concluded investigations, i.e. cases where the individual is found guilty of misconduct, within one month after the cases are concluded.

13. Some respondents suggested defining a materiality threshold for reportable misconduct, where reportable events would be confined to those of serious nature meeting the materiality threshold. One respondent suggested attaching a monetary value threshold for such reporting. The HKMA considers that setting up an industry-wide quantitative materiality threshold may not be appropriate given the scale of business of AIs varies. However, we agreed that reportable information should be confined to that which is material or serious in nature and should generally fall under items stated in paragraph 35 (i) to (v) in the Consultation Paper[5]. More practical guidance on what constitutes reportable information can be further deliberated by the IWG.

14. Some respondents expressed concern that disclosure of misconduct may unveil proprietary information, internal control deficiencies or business secrets of the reference providing AIs. In this regard, reportable information should focus on the misconduct activities committed by the individual concerned rather than details of proprietary or sensitive commercial information of the AI concerned.

15. Respondents also sought clarification on the definition of "internal disciplinary actions" that are reportable under the MRC Scheme. For the purpose of the MRC Scheme, internal disciplinary actions should include actions that are taken by the AI against the employee as a result of misconduct on the part of the employee. Generally speaking, internal disciplinary actions may include internal warnings (either in written or verbal form); financial penalty involving remuneration; and suspension and dismissal as a result of misconduct. For the purpose of the MRC Scheme, internal disciplinary actions do not include managerial coaching and counselling, suspensions pending investigations, or leaves taken while investigations are being carried out.

16. Some respondents noted that the reference providing AI may not have sufficient information on external disciplinary actions for MRC reporting purposes, as such information may not be publicly available. The HKMA considers that external disciplinary actions refer to those taken by

[5] Paragraph 35 of the Consultation Paper sets out the following items:
(i) breach of legal or regulatory requirements relating to the BO, IO, MPFSO and SFO;
(ii) incidents related to honesty, integrity or matters of similar nature;
(iii) misconduct reports filed with the HKMA;
(iv) internal or external disciplinary actions arising from conduct matters; and
(v) any other additional information relevant to the fit and proper assessment.

regulatory bodies, industry associations and professional bodies against the individual during his/her employment with the reference providing AI. The expectation of the HKMA is that reference providing AIs will, on a best endeavour basis, report external disciplinary actions that have been made known to the public. Reference providing AIs are not expected to conduct a search on behalf of the recruiting AI for actions taken against the individual outside of his/her employment period.

3. Duration of MRC Information

17. The Consultation Paper proposed that MRC information should cover employment records of 10 years up to the date of the individual's application for employment with the recruiting AI. This proposal made reference to the current HKMA requirement for individuals to disclose 10 years of employment records in their applications for the positions of directors, CEs, ACEs and EOs at AIs. In this respect, the PCPD noted that as the MRC Scheme is conducted for the legitimate purposes of tackling the RBA issue and enhancing integrity of the banking industry, there are subsisting reasons for AIs to retain MRC-related employment data for longer than the 7-year retention period applicable otherwise. However, respondents generally considered it onerous to retain 10 years of employment records in order to meet the requirements of the MRC Scheme as the conventional practice of employment record retention is only 7 years. They noted that the operational and resources implications would be higher if they are required to retain employment-related data for more than 7 years, and it may deny employees of a rehabilitation opportunity. The HKMA has duly considered the industry's comments and is of the view that the employment records retention period can be reduced to 7 years for Phase 1 and Phase 2 of the MRC Scheme, subject to further deliberation of the IWG.

4. Obligations of Recruiting AIs

18. Most of the respondents agreed that consent should be obtained from the prospective employee before the recruiting AI initiates a reference check. They suggested that a standard written consent template would be useful so that a consistent approach can be applied across the industry. The HKMA suggests that the IWG may take the lead to develop an industry standard template to facilitate the operation of the MRC Scheme.

19. Some respondents expressed that recruiting AIs may face practical difficulties in obtaining the prospective employee's consent to request MRC information from his/her current employer as this would inevitably expose the prospective employee's intention to change job which in turn may affect the current employment relationship if the prospective employee eventually cannot secure a job offer from the recruiting AI. Taking into account the feedback received, a possible solution would be for the recruiting AI to consult and coordinate with the prospective employee on the appropriate timing for sending out the MRC requests. For example, the recruiting AI may first proceed to obtain MRC information from the prospective employee's former employers and conduct the MRC process based on such information. If the MRC process is cleared, the recruiting AI may make a conditional offer to the candidate. The recruiting AI may then send out the MRC request to the candidate's current employer and carry out the remaining MRC process, subject to which the employment decision can be finalised. This arrangement may help address the candidate's concern as indicated above.

20. Some respondents asked whether recruiting AIs are required to complete all the MRC processes before making employment decisions. Generally speaking, recruiting AIs are strongly encouraged to complete all the MRC processes before on-boarding prospective employees. In cases where a recruiting AI would like to advance the employment decision before the completion of the MRC process, they may exercise flexibility by making a conditional offer or requiring the prospective employee to provide a self-declaration that he/she has not been involved in any misconduct incidents or subject to any material disciplinary actions, while pending the completion of the MRC processes.

21. Some respondents sought clarification on whether there would be any legal and/or regulatory consequences to the recruiting AI if it chooses to hire an individual despite being informed about misconduct in the individual's employment history, or if negative information is received after an employee has been on-boarded. The HKMA notes that except for the

appointment to some senior positions that requires regulatory approvals, AIs will have discretion on their employment decisions, including whether to rescind an offer of employment or to continue to proceed with the employment. If AIs choose to proceed with the employment of an individual notwithstanding the negative MRC information received, AIs should document the justifications and should take such information as a red flag that may warrant a greater scrutiny on possible conduct risks that may be posed by such individuals. Depending on the nature and severity of the prior misconduct activity, this should inform AIs of possible mitigating measures.

22. The Consultation Paper proposed that an opportunity to be heard should be given to the prospective employee by the recruiting AI in case there is any negative information about the candidate being received from the reference providing AI. While the PCPD agrees that such proposal would be in line with the requirements related to the right to request correction of inaccurate personal data under the Personal Data (Privacy) Ordinance ("PDPO"), most of the respondents considered that recruiting AIs should not be obliged to provide an opportunity to be heard in all circumstances as the process may involve disclosing information and potentially lead to breach of statutory secrecy obligations or other confidentiality agreements. Also the divulgence of MRC information may tip off the individual concerned and compromise the quality of any ongoing investigation. Having considered the industry's comments, the HKMA maintains the view that on the ground of fairness to the prospective employee, an opportunity to be heard should generally be provided, including but not limited to cases where the misconduct incident has been substantiated, or where external or internal disciplinary actions have been taken against the individual. As for cases where there are legal impediments for disclosure to the prospective employee in the course of providing an opportunity to be heard (such as alleged misconduct cases that are still under confidential investigation, cases involving sensitivity concerning secrecy or potential tipping off, and cases with other potential legal implications, etc.), it would be appropriate for the proposed IWG to consider the practical issues in more detail taking into account PCPD's views.

23. One respondent sought clarification on whether AIs can outsource the MRC process to external services providers. Depending on business needs and similar to the existing arrangements of some AIs which outsourced their human resources ("HR") management related functions, AIs may outsource their MRC process to external services providers as long as the AIs remain ultimately responsible for ensuring compliance with the relevant supervisory requirements applicable to outsourcing. In particular, AIs should have contractual arrangements and relevant controls measures in

place to safeguard the security and storage of data to prevent data leakage if outsourcing is adopted.

5. Obligations of Reference Providing AIs

24. On the timeframe for reference providing AIs to respond to a MRC request, most of the respondents considered that 10 working days would not be sufficient as some AIs may have lean HR department setup where handling of staff records may involve other functional departments within the AI in addition to the HR department. Some respondents considered that the MRC Scheme would cause a delay in the hiring process. The HKMA considers it important to strike a balance between operational needs and efficiency in handling the MRC request. Taking into account industry concerns, the HKMA agrees that the timeframe for reference providing AIs to respond to an MRC request can be lengthened, say to one month, counting from the day the MRC request is made by the recruiting AI. We believe that the revised proposal of a response time of one month would not cause significant delay in the hiring process. The HKMA encourages the industry to set up and maintain a list of contact points of individual banks for the purpose of MRC process to facilitate efficient communication and information exchange among AIs. Refinements to the response time can be considered by the IWG having regard to industry feedback and operational experience.

25. Some respondents sought clarifications on scenarios where the reference providing AI should provide updates on an earlier MRC report to a recruiting AI. As a general rule, an update should be provided if it may lead to substantive changes to the reference information previously provided. In determining whether an update is necessary, the reference providing AI should consider factors such as the role of the former employee in the misconduct case and seriousness of the incident, etc.

26. Some respondents raised questions about the handling arrangements if a reference providing AI fails to provide a response to the MRC request within the specified response period, i.e. one month. As noted in paragraphs 50 and 51 of the Consultation Paper, reference providing AIs should normally respond within the specified response period. However, if they encounter genuine difficulties which render them unlikely to be able to observe the specified period of one month, they should provide an interim reply to the recruiting AI before the lapse of the specified period setting out the reasons for the longer time required and an estimated timeframe for providing a response. The recruiting AI would be considered to have discharged its obligations under the MRC Scheme if it does not receive any MRC information from the reference providing AI after one month or a longer period mutually agreed by both parties.

27. In cases where AIs observe repeated failures of a particular AI to respond to MRC requests, such a matter can be raised to the IWG for follow-up and any unresolved matter can be brought to the attention of the HKMA through the IWG. Repeated failures may indicate potential weaknesses on the governance arrangements as well as the internal controls and procedures of the AI, and the HKMA may follow up with the AI concerned accordingly.

III. Implementation Approach and Next Steps

28. As noted in the Consultation Paper, the HKMA's intention is that instead of introducing the MRC Scheme as a supervisory requirement, the development and implementation of the MRC Scheme should be an industry-led initiative to be endorsed by the HKMA, with a view to assisting the banking industry in tackling the RBA phenomenon on an industry-wide basis. The experience gained by the industry in their operation of the MRC Scheme can usefully inform the review of the implementation of Phase 1 and the consultation for Phase 2.

29. Following the issuance of this Conclusions Paper, the HKMA will invite the Hong Kong Association of Banks ("HKAB") to set up an IWG to work out the details of the MRC Scheme that is in line with the principles set out in this Conclusions Paper. The IWG will also facilitate the operation of the MRC Scheme; provide a platform for gathering industry feedback on MRC implementation issues on an ongoing basis; and explore the benefits and feasibility of further approaches and technological solutions to address the RBA phenomenon in the longer term, including the possibility of establishing a central register ("CR") for the MRC Scheme to be developed and operated by the industry.

30. The IWG is expected to deliver the operational details of the MRC Scheme within 6 months upon issuance of this Conclusions Paper. On the timeline for the implementation of Phase 1 of the Scheme, the HKMA noted the industry's request for a transition period to commence upon the HKMA's endorsement of the operational details proposed by the IWG so as to allow sufficient time for AIs to set up their internal processes and procedures for the MRC Scheme. The IWG may further deliberate on the detailed implementation timeline of the MRC Scheme in consultation with the HKMA.

31. It was proposed in the Consultation Paper that a review on the implementation of Phase 1 would be conducted one year after the launch of Phase 1. Most respondents however considered it preferable for the review to be conducted two years after implementation of Phase 1 in order to allow more time to test their internal processes as well as to gain practical experience given that the turnover rate of Phase 1 personnel would likely be relatively low. They also suggested that a second round of consultation be held before Phase 2 implementation. Having considered these comments, the HKMA is of the view that a Phase 1 review could be conducted two years after implementation of Phase 1. A consultation on

Phase 2 would be conducted in conjunction with the review before the implementation of Phase 2. Subject to the outcome of the review of Phase 1 and the corresponding consultation on Phase 2, the implementation details of Phase 2 will be formulated accordingly.

Annex 1 – List of Respondents

(in alphabetical order)

1. Asia Securities Industry & Financial Markets Association
2. Clifford Chance
3. Privacy Commissioner for Personal Data, Hong Kong
4. Private Wealth Management Association
5. Svenska Handelsbanken AB (publ.)
6. The DTC Association
7. The Hong Kong Association of Banks

Annex 2 – Summary of Industry's Comments and HKMA's Responses

#	Comments / questions from respondents	HKMA's response
Q1. Do you have any comments on the proposed phased implementation approach?		
1.	No particular comments received.	N/A
Q2. Do you have any comments on the respective scope of personnel proposed to be covered by Phase 1 and Phase 2 of the proposed MRC Scheme?		
2.	**Treatment of existing employees** Some respondents sought clarifications on whether the MRC Scheme will also cover existing employees. One respondent suggested that the scope should be expanded to cover not only prospective employees applying for in-scope positions, but also existing employees who are employed in those specified positions. One respondent sought clarifications on whether MRC Information previously gathered by a recruiting AI could be "recycled" within the AI if an individual leaves the AI but rejoins multiple times over the specified period.	The MRC Scheme primarily serves to facilitate AIs in making employment decisions, thus it is not necessary for AIs to conduct MRC on existing employees who currently hold in-scope roles. The MRC Scheme will only apply to new hires but not to existing employees who currently hold in-scope roles. For an individual who leaves an AI but rejoins multiple times over the 7-year period, the recruiting AI can make use of previous MRC Information it had gathered on the individual and conduct MRC on other relevant employment records that were not covered in the previous check.
3.	**In-scope personnel for Phase 2** Most of the respondents considered having the MRC Scheme cover client-facing staff to be too broad and would induce heavy burden on banks and significantly increase the number of employees who will be subject to the MRC process. They also considered there is no pressing need to address RBA for junior staff. Some of the respondents suggested that Phase 2 of the MRC Scheme be confined to staff who are licensed with financial	In view of comments that a relatively broad scope of coverage of client-facing staff could induce heavy resource and operational burden on AIs, and that the risks posed by RBA are higher for licensed roles, it is proposed that Phase 2 should only extend the scope of personnel covered in Phase 1 to include employees who are registered or licensed with the local financial regulators as elaborated in paragraph 32 (ii) to (iv) of the Consultation Paper. The inclusion of other roles (including non-client facing roles) under the MRC Scheme

#	Comments / questions from respondents	HKMA's response
	regulators. One respondent suggested the inclusion of some non-client facing roles, such as settlement personnel, into the MRC Scheme.	can be considered further by the IWG having regard to the experience in Phase 1.
4.	**Intragroup move / promotions / cross-border application** Most of the respondents sought clarification on whether the MRC Scheme will apply to internal transfers from within the same group of the recruiting AI, and to employees who are being promoted to in-scope roles. Some also had questions about the MRC Scheme's cross-border application, say for employees based outside Hong Kong but with regional oversight functions in Hong Kong.	AIs within the same group may share common internal records or human resources functions. The MRC Scheme will allow flexibility for AIs within the same banking group to perform reference checks using procedures other than those prescribed in the MRC Scheme as long as the relevant information can be obtained. The requirements relevant to the requesting or updating of MRC information can be carried out in a way that best suits the intragroup practice taking into account their AI's group internal records, common human resources functions or other means for sharing relevant information. The onus will still be on the recruiting AI within the group to obtain the necessary information to satisfy its obligations to ensure the individual is fit and proper. For employees subject to intragroup transfers / promotions, such employees may have already established a track record after having served in the AI's group for a considerable period of time. In such cases, AIs can consider whether it is useful to conduct MRC on such employees to cover the time of their employment prior to joining the group, taking into account the number of years of experience that they have had in the AI's group. At the initial stage, we are of the view that the MRC Scheme should be applied to AIs in Hong Kong but not their head offices or branches

#	Comments / questions from respondents	HKMA's response
		outside Hong Kong given potential cross-boundary issues. The HKMA will keep in view the implementation of the MRC Scheme and consider whether to extend its coverage subject to discussion with the industry.
5.	**Contract or temporary employee** Some respondents considered that applying MRC to temporary and contract employees may be disproportionate to the duration of their tenure with the recruiting AI. Some considered that such employees are often recruited to promptly fill temporary vacancies, and that requiring recruiting AIs to comply with the MRC Scheme requirements with respect to such employees would essentially deny them the ability to solve certain urgent and pressing personnel shortage. One respondent also raised that temporary human resources such as agency contractors, secondees, consultants or interns should be exempted as AIs generally do not maintain full records of temporary employees or third-party contractors.	The proposed in-scope personnel are generally those who may pose significant issues if the RBA phenomenon is not addressed properly, thus we consider it appropriate for the MRC Scheme to cover these roles as long as they fall within the scope of personnel of the MRC Scheme irrespective of the length of the employment. Employees that are on secondment or assigned by third parties to perform in-scope roles would be subject to the MRC Scheme and the reference check should be performed by the AI concerned or through other arrangements (such as outsourcing). The AIs should be held ultimately responsible for the MRC process. To avoid causing an undue delay in filling pressing vacancies, AIs can exercise discretion to determine the appropriate timing in conducting the MRC and may consider advancing hiring decisions to best suit their business or operational needs, see #53 on finalisation of employment decision for details.
6.	**Information in relation to previous out-of-scope role** Some respondents sought clarification on whether MRC information for out-of-scope role employees should be maintained and provided to recruiting AIs for MRC purpose.	The reference providing AIs will need to provide recruiting AIs with MRC information on individuals for role(s) that he/she held in the reference providing AI irrespective of whether such role(s) was in-scope under the MRC Scheme.

#	Comments / questions from respondents	HKMA's response
7.	**Alignment of scope of Phase 1 and Phase 2 personnel with existing licensing and approval regimes of the HKMA and other regulators** One respondent asked whether there is a need for individuals who are subject to the approval and licensing regimes of HKMA or other regulators to be covered under MRC Scheme, and if so how the MRC Scheme can be better aligned with the relevant licensing requirements.	The MRC Scheme aims to help strengthen AIs' recruitment process and remove some obstacles that AIs may face in assessing the fitness and propriety of prospective employees, including with respect to roles that require approvals from regulators, such that AIs can play a more proactive role in tackling the RBA phenomenon. Given the MRC Scheme has yet to be implemented, further considerations about potentially streamlining the MRC Scheme with other related licensing requirements could be considered in the longer term taking into account implementation experience of the MRC Scheme.
8.	**Overlap of heads / deputy heads of key supporting functions with §72B managers under the BO** Some respondents considered that the role of deputy head is vague and may have different meanings across the industry, and that it can be exempted from the scope of MRC. Some noted that heads/deputy heads of key supporting functions as proposed to be covered in Phase 2 will largely overlap with §72B managers who are already covered in Phase 1. One respondent noted that individuals within the HR and legal functions of AIs are currently unregulated, and that the inclusion of senior managers of these functions within the scope of the MRC Scheme would be unprecedented in Hong Kong.	For simplicity and to avoid misinterpretation issues, the HKMA agrees to remove heads / deputy heads of key supporting functions from MRC coverage under Phase 2. The coverage of in-scope roles for Phase 2 can be further considered in the review to be conducted prior to Phase 2 implementation.
9.	**Inclusion of ROs under the MPFSO under Phase 1** One respondent noted that since EOs under the BO and ROs	The HKMA agrees to include ROs under MPFSO in the MRC Scheme. As ROs under the IO and the MPFSO are important roles in AIs, we

#	Comments / questions from respondents	HKMA's response
	under the IO fall under Phase 1 and Phase 2 of the MRC Scheme respectively, ROs under MPFSO should also be covered under the MRC Scheme.	will bring ROs under the IO and the MPFSO under Phase 1 of the MRC Scheme.
Q3. Do you have any comments on the proposed timeframe for implementation of Phase 2 following the launch of Phase 1?		
10.	**Phase 1 implementation** Respondents sought clarification on the timing for the implementation of Phase 1. They considered that sufficient time will be required by AIs to set up internal operational processes to comply with the MRC Scheme requirement and to conduct training for relevant staff. They proposed to set the implementation date to be at least 12 – 18 months following the HKMA's publication of the consultation conclusion.	Upon the publication of the consultation conclusions, the HKMA will invite HKAB to set up an IWG to formulate the operational details of the MRC Scheme in accordance with the principles set out in the Conclusions Paper. Such operational details should be finalised within 6 months of the publication of the Conclusions Paper for endorsement by the HKMA. On the timeline for the actual implementation of the MRC Scheme, the HKMA noted the industry's request for a transition period from the time that the operational details are endorsed by the HKMA, in order to provide sufficient time for AIs to set up their internal processes and procedures for the MRC Scheme. The IWG may further deliberate on the implementation timeline of the MRC Scheme in consultation with the HKMA. It is envisaged that, following the implementation of the MRC Scheme, the IWG will also take the lead in conducting the review on the implementation of Phase 1 of the MRC Scheme.
11.	**Phase 1 review and Phase 2 implementation** Respondents noted that conducting a Phase 1 review after 1 year of implementation would be insufficient to gain relevant experience and to test internal processes given the low turnover rate of Phase 1 personnel. They proposed to allow an additional year for the Scheme to operate before conducting a review on	We agree that a review of Phase 1 could be conducted 2 years after the implementation of Phase 1 to allow sufficient time to gain experience and to identify room for improvements. Consultation on Phase 2 implementation could be conducted in conjunction with the review on Phase 1, following which the operational details of Phase 2 can be fine-tuned and confirmed for implementation accordingly.

#	Comments / questions from respondents	HKMA's response
	Phase 1. Respondents generally considered that a second round of consultation will be necessary before the launch of Phase 2 so that the industry can be involved in the process given the anticipated complexity and the wider scope of coverage under Phase 2. Some respondents invited the HKMA to consider adopting a staggered approach to the implementation of Phase 2 given the broad range of personnel it covers.	
Q4. Do you have any comments on the proposed scope of MRC information, in particular information relating to investigation in progress but not yet concluded?		
12.	**Disclosure and provision of updates related to ongoing investigation** Most of the respondents expressed concerns about disclosing open investigations, as they may expose AIs to potential litigation risks and that it may affect ongoing investigations, in particular those involving regulatory bodies or a suspected offence, and those where the investigation is expected to be conducted confidentially or is subject to secrecy requirements under applicable laws. It may also be unfair to the individuals concerned. In this connection, some respondents proposed that disclosure be confined to concluded investigations only. On a related note, some respondents sought clarification on the timeframe for reference providing AIs to provide notifications to recruiting AIs on concluded investigations.	In view of the industry's comments, the HKMA considers that the issue of the reporting of ongoing investigations could be further deliberated by the IWG to be established. On the one hand, there are constraints and potential legal implications associated with disclosure of ongoing and incomplete investigations by the reference providing AIs to the recruiting AIs. However, on the other hand, if all ongoing and incomplete investigations are excluded, it may provide a potential loophole for the "bad apples" to resign from the current job once an investigation about their misconduct has been started or is about to conclude with likely disciplinary actions, thereby bypassing the MRC Scheme and escaping from the consequences of their misconduct behaviour. The HKMA considers that in principle the reference providing AIs should provide information about ongoing investigations with allegations that are of serious nature as well as those which are about to conclude with disciplinary actions. The MRC information so provided may contain basic information about the allegations and the state of investigation. As the

#	Comments / questions from respondents	HKMA's response
		prospective employee will be given an opportunity to be heard, it will be up to the recruiting AI to take into account the information available before making the recruitment decision. This would help strike a balance between mitigating AIs' litigation risks and addressing the risk of hiring "bad apples". The IWG may duly consider the matter and prepare guidance on the types of ongoing investigations that should be included as well as the exemptions that should be applied, for instance due to statutory prohibitions, taking into account the above considerations as well as views of the industry participants. As for the timeframe to provide an update on concluded investigations, reference providing AIs should provide an update to a recruiting AI upon conclusion of investigation cases where the individual is found to have committed serious misconduct within one month after the cases are concluded.
13.	**Internal informal review** Some respondents sought clarification on whether investigations cover internal informal reviews and the types of investigations or reviews that would be captured by the MRC Scheme.	In considering whether internal informal reviews or other forms of reviews concerning staff conduct matters should be covered under the MRC Scheme, AIs should consider the context of such reviews. If the review aims to examine suspicious misconduct cases with prima facie evidence, then it should be considered as investigations. On the other hand, reviews conducted on the AIs' processes and controls, or general complaints with little prima facie evidence and subsequently found unsubstantiated, should generally not be considered as investigations. However, if such a review unveils that an individual may have been involved in misconduct, AIs should conduct an

#	Comments / questions from respondents	HKMA's response
		investigation accordingly. See #27 below for a non-exhaustive list of investigations. The IWG is invited to set out more specific criteria for the types of investigations or reviews to be included for reporting under the MRC Scheme.
14.	**Employees working in multiple entities within a group** One respondent sought clarification on cases where employees have employment records at multiple entities within a group, whether reportable information should be limited to his/her activities at AI(s) or should also cover those carried out at other affiliates within the group. One respondent suggested that a streamlined approach to request MRC information from different AIs within the same group can be considered.	The reference checking process is expected to be carried out on an AI entity basis. In other words, if the employee's employment records span across various entities/branches/head office within a group, reportable information should be confined to the employee's activities at the reference providing AI but not at other affiliates within the same group. The reference providing AI is considered to have discharged its obligations under the MRC Scheme so long as information within the reference providing AI (and not of its affiliates) have been provided to the recruiting AI. If a prospective employee has worked at more than one AI within a group, the recruiting AI should approach the different reference providing AIs for MRC separately. The streamlined approach to group companies can be further considered by the IWG subject to the general feedback of the industry.
15.	**Reason for the cessation of appointment** On the MRC Information Template, one respondent sought clarification on the level of detail required in disclosing the reason for cessation of appointment of the individual	As a general reference, it is considered sufficient for AIs to indicate whether an employee resigned on his/her own accord or whether his/her employment was terminated by the AI with notice or summarily.

#	Comments / questions from respondents	HKMA's response
	concerned.	The IWG is welcomed to work out any reference template for standardisation of reply.
16.	**Scope of involvement** One respondent sought clarification on what constitutes "involved" in misconduct that would be reportable under question 1 of the MRC Information Template, as an individual may simply be a member of the management team when the AI committed a regulatory breach, or he/she may be interviewed as part of a wider investigation but did not commit the misconduct.	Reportable information in MRC should cover employees who committed misconduct or were accomplices in the misconduct activities. Matters relating to employees who assisted during the investigation process but did not take part in the misconduct himself/herself are not required to be reported. The IWG is invited to develop more detailed and practical instructions together with examples on what constitutes reportable information for reference by the industry.
17.	**Materiality Threshold** Some respondents considered that defining a materiality threshold for reportable misconduct would be useful, such that reportable misconduct would be confined to those of serious nature. One respondent suggested to attach an amount threshold (e.g. beyond a HKD amount threshold in a fraud case). One respondent proposed to only provide records of misconduct which led to a dismissal.	The HKMA is of the view that quantifiable threshold of severity may not be applicable in all circumstances, given that the operational scale of AIs varies, and that the monetary sum might not fully reflect the circumstances and severity of the misconduct incident. The inclusion of only the records of misconduct which led to a dismissal is also insufficient. Nonetheless, the HKMA agrees that reportable information should be confined to that which is material or serious in nature and should generally fall under categories (i) to (v) as stated in paragraph 35 in the Consultation Paper. AIs should exercise judgement in considering the severity of the misconduct incidents. More practical guidance together with examples on what constitutes reportable information can be further deliberated by the IWG.

#	Comments / questions from respondents	HKMA's response
18.	**Incidents related to honesty, integrity or matters of similar nature** One respondent considered the coverage of the said category too vague. It is unclear if internal investigations which do not result in adverse findings constitute a reportable incident. It was suggested that this category be made more specific, such as for example "Incidents which cast serious doubts on honesty, integrity or matters of similar nature".	The HKMA agrees to refine the said category as "Incidents which cast serious doubts on honesty, integrity or matters of similar nature". Internal investigations which do not result in adverse findings should not constitute reportable information.
19.	**Misconduct report filed with the HKMA** One respondent sought clarification on what constitutes a misconduct report filed with the HKMA, for instance whether it is one that is addressed specifically to the HKMA only or whether it includes correspondence addressed to other relevant authorities and copied to the HKMA. One respondent also sought clarification on whether reports filed with or copied to the HKMA with undetermined/inconclusive results would also fall within the reporting scope.	Misconduct reports filed with the HKMA should cover those filed against the individual regardless of whether the report is filed specifically with the HKMA only or with other relevant authorities and copied to the HKMA. Reports with undetermined / inconclusive results filed with the HKMA may still cast doubts on the honesty and integrity of the individuals. The HKMA invites the IWG to consider how reference providing AIs should exercise judgement in considering whether such reports would fall within the reporting scope.
20.	**Sexual harassment/bullying** One respondent asked whether sexual harassment or bullying should fall under conduct matters and be reportable under the MRC Scheme.	Sexual harassment or bullying should be considered misconduct activities and should be included as reportable matters under the scope of MRC.
21.	**Scope of "any other information"** In relation to question 2 of the MRC Information Template, one	The reference providing AI is expected to provide any other information that it reasonably considered to be relevant to recruiting

#	Comments / questions from respondents	HKMA's response
	respondent sought clarification on what constitutes "any other information" that is relevant to the fit and proper assessment of an individual.	AI's assessment of whether the individual is fit and proper. The disclosure should be made on the basis that the reference providing AI should only disclose information about incidents or matters that: (1) occurred or existed (a) within the specified period before date of request for a reference; or (b) between the date of request for the reference and the date the reference providing AI provides the reference; and (2) is related to misconduct that is of a material or serious nature.
22.	**Reference providing AIs to pass on previously obtained MRC information** One respondent suggested that the recruiting AI may only need to obtain MRC information from the reference providing AI which last employed the individual, which would not only provide the recruiting AI with the individual's MRC information during his/her period of employment, but also all previous MRC information obtained by that reference providing AI from previous employers of the individual.	We consider "recycling" of MRC information previously obtained from other AIs neither adequate nor appropriate as there may be subsequent MRC information updates that may not be made known to the AI which last employed the individual. There may also be personal data privacy concerns regarding the transfer of such MRC information. Recruiting AIs should therefore directly reach out to current/former employers of the individual concerned with the MRC request. For reference providing AIs, the scope of information to be provided should be confined to the individual's activities during his/her period of employment, and reference providing AIs are not obliged to pass on MRC information that they previously obtained from the individual's former employers.
23.	**Question 2 in the MRC Information Template** One respondent considered "fit and proper" can be interpreted	Given the interpretation of "fit and proper" may have a broader and slightly varying meaning in different regulatory regimes, question 2 is

#	Comments / questions from respondents	HKMA's response
	very broadly and that the term is used in different regulatory regimes which may have a wider meaning than that is intended under the MRC Scheme.	proposed to be revised as follows: "Are you aware of any other information that you consider would be relevant to our assessment on the conduct of the individual?"
24.	**Confidentiality obligations** Some respondents noted that an AI which has entered into a deed of release with a departing employee will often be bound by confidentiality provisions in the deed, and will not be able to disclose information regarding the employment of the employee.	After implementation of MRC, AIs should be mindful about entering into any contractual obligations which may limit their ability to disclose information as required under the MRC Scheme. Also, the written consent of the individual should be formulated to be provided to both recruiting and reference providing AIs to exclude them from contractual obligations which may limit their ability to disclose information as required under the MRC Scheme. For contracts that have already been entered into, AIs should seek to review the contractual arrangements to address any contractual obligations which may limit their ability to disclose information as required under the MRC Scheme. The HKMA invites the IWG to explore ways to address situations where further limitations would be experienced.
25.	**Disclosure of confidential and proprietary information to competitor AIs and the public** Some respondents noted that the disclosure of misconduct activities may unveil proprietary information, internal control deficiencies or business secrets of the reference providing AIs.	Reportable information should focus on the misconduct activities of the individual concerned rather than details of proprietary or sensitive commercial information of the AI concerned.
26.	**SFC notification requirements also applies to registered institutions ("RI")**	For AIs which are RIs under the SFO, they are required to report to the HKMA and the SFC any investigation conducted on an EO within

#	Comments / questions from respondents	HKMA's response
	One respondent noted that the proposed scope of MRC information is too broad and is inconsistent with the approach taken by Securities and Future Commission ("SFC") which only requires licensed corporations ("LCs") to provide the SFC with information about whether a licensed individual who ceases to be accredited to it was under any investigation commenced by the LC within six months preceding his/her cessation of accreditation. The respondent suggested for the HKMA to take into account the SFC's notification requirements and approach with respect to investigations, and ensure a consistent standard is applied across the financial industry.	6 months preceding the cessation of appointment of that individual as an EO. Such a requirement has been communicated in the HKMA circular dated 31 May 2019. The MRC Scheme is currently proposed to be applied to AIs and not to the broader financial sector outside of banking, and any expansion of the application of the MRC Scheme will be subject to discussion with other relevant stakeholders.
27.	**Definition of investigations** One respondent sought clarification on what constitutes "investigations".	The following is a non-exhaustive list of examples of investigations: - investigations about suspected breach or breach of applicable laws, rules and regulations; - investigations about suspected breach or breach of the AI's internal policies or procedures; - investigations about misconduct that are likely to give rise to concerns about the fitness and propriety of the individual; - investigations about any matter that may have an adverse market or client impact; and - investigations about any matter potentially involving fraud, dishonesty and misfeasance. The HKMA invites the IWG to provide more guidance as necessary.

#	Comments / questions from respondents	HKMA's response
28.	**Investigations which commenced after departure of individual** The Consultation Paper proposes that where an investigation or proceeding concerning the individual is commenced after the individual has left the reference providing AI, the reference providing AI should update the recruiting AI if the investigation is commenced within 10 years after the individual's departure. One respondent considered that there may be potential unfairness to the individual if an investigation is only initiated and reported after such a substantial period of time following the individual's departure.	The 10-year period was proposed on the ground that some financial products such as insurance products are of a relatively longer term nature, and that misconduct issues such as mis-selling may not surface until a relatively long time has lapsed. That said, taking into account industry comments, it is proposed that the reference providing AI should consider providing an update to the recruiting AI (which to their best knowledge is the current employer of the individual) on an investigation that is commenced within 7 years instead of 10 years after the individual has left the reference providing AI. This is also in line with the proposed duration of MRC information as stipulated in #48. See also #12 on the disclosure and the provision of updates related to ongoing investigations. Detailed operational arrangement can be further deliberated by the IWG.
29.	**Level of detail** One respondent sought clarification on the level of detail required in the MRC Information Template.	A reference should provide a factual description of the incidents, the outcome of any investigation and the disciplinary action, if applicable. Disclosures are not normally expected to include proprietary or commercially sensitive information.
30.	**Supporting documents** Some respondents sought clarification on whether the reference providing AIs are required to provide additional supporting documents on top of the written information as specified in the template.	The reference provided to the recruiting AI should be clear and factual description of the matters. The reference providing AI is not expected to provide internal supporting documents to the recruiting AI. However, the referencing providing AI should retain such internal documents for audit trail purposes.

#	Comments / questions from respondents	HKMA's response
Q5. Do you have any comments on the proposed scope of reportable internal and external disciplinary actions to be covered under the MRC Scheme?		
31.	**Reduction in remuneration arising from matters other than misconduct** One respondent sought clarification on whether remuneration reductions arising from factors such as the unsatisfactory performance of the individual, economic conditions, or a change in his/her role or responsibilities would be counted as a reportable item under the MRC Scheme.	Reduction in remuneration as a result of the performance of the individual, economic conditions, or a change in role or responsibilities that does not relate to the individual's conduct matters would generally not be regarded as reportable items under the MRC Scheme.
32.	**Definition of claw-back of remuneration** Some respondents sought clarification on the definition of claw-back of remuneration.	For simplicity, it is proposed to generalise the term as financial penalty involving remuneration that arises from misconduct of the individual.
33.	**Internal disciplinary actions** Some respondents sought clarification on whether suspensions pending investigations, verbal warnings, leaves taken while carrying out an investigation, managerial coaching or counselling would be considered as part of the internal disciplinary actions that are reportable under MRC. One respondent also sought further guidance and practical examples of what would be considered to fall outside the scope of "internal disciplinary actions".	The definition of internal disciplinary actions may vary among different AIs. For the purpose of the MRC Scheme, internal disciplinary actions should include actions that are taken by the AI against the employee as a result of misconduct on the part of the employee. Generally speaking, internal disciplinary actions may include internal warnings (either in verbal or written form); financial penalties involving remuneration; and suspensions and dismissals as a result of misconduct. For the purpose of MRC Scheme, internal disciplinary actions are not expected to include managerial coaching and counselling, suspensions pending investigations, or leaves taken while investigations are being carried out. Reportable internal disciplinary

#	Comments / questions from respondents	HKMA's response
		actions should be those that arise from misconduct of material nature. AIs should exercise judgement in considering whether an internal disciplinary action should fall within the reporting scope. The IWG can provide practical examples to illustrate what constitutes internal disciplinary actions based on the principles described above.
34.	**External disciplinary actions** Some respondents noted that the reference providing AI may not have full knowledge about external disciplinary actions as such information may not be publicly available.	External disciplinary actions refer to those taken by regulatory bodies, industry associations and professional bodies against the individual during his/her employment with the reference providing AI. The expectation of the HKMA is that reference providing AIs will report external disciplinary actions that are known to the public on a best endeavour basis. Reference providing AIs are not obliged to conduct a search on behalf of the recruiting AI for actions taken against the individual outside of their employment period.
35.	**Removal of internal disciplinary actions** One respondent suggested removal of "internal disciplinary actions" from the scope of MRC information, or that it should be confined to internal disciplinary actions which arise from significant breaches.	Internal disciplinary actions may stem from a breach of an AI's internal policies and procedures and would be considered conduct matters, and hence they should not be removed from the scope of MRC information altogether. Reference providing AIs are expected to exercise judgement and consider the substance of the matter to decide whether to report the item under the MRC. See #33 on internal disciplinary actions under the MRC Scheme. We agree to limit the scope to internal disciplinary actions which arise from breaches which are of a material or serious conduct nature. See #17 on materiality threshold.

#	Comments / questions from respondents	HKMA's response
36.	**Grace period** One respondent suggested a grace period should be provided in the first few years of MRC implementation as AIs generally have different data retention policies that may fall short of the retention period that is required under the MRC.	Upon finalisation of the details of the MRC Scheme, AIs are expected to establish policies and procedures to retain and start building MRC records on an ongoing basis. For reference providing AIs, where MRC records may not have been retained prior to introduction of the MRC Scheme, they should provide relevant information to the recruiting AI on a best-effort basis. The IWG may work out suitable transitional arrangements for AIs which may not have retained records for a 7-year period upon the implementation of the MRC Scheme.
Q6. Do you have any comments on the proposed MRC Information Template in Annex 2 to this paper?		
37.	**Definitions of terms used in the MRC Scheme** Some respondents requested for definitions of the various terms used in the MRC Information Template, to avoid ambiguity in implementing this template in practice.	While the Consultation Paper and Conclusions Paper have elaborated HKMA's view on key matters on the MRC Scheme, it is suggested that the IWG may consider formulating a list of abbreviations / definitions for the implementation of the MRC Scheme.
38.	**Textual suggestions on template** One respondent proposed some textual changes to the first paragraph of the template: • In the proposed template, the recruiting AI is required to provide the two dates covering the period it is seeking information for. This seems unnecessary and the first paragraph is suggested to be revised to read: "The information should cover any period falling within 10 years prior to the date of this request where the following individual is employed by your institution."	The proposed textual amendments are considered acceptable. Further refinements can be considered by the IWG.

#	Comments / questions from respondents	HKMA's response
	• The first sentence is suggested to be amended to read "We have made a conditional offer of employment to the following individual…".	
39.	**Job specifications** Respondents sought clarification on the level of detail required on the "description of role" column in the table "Information of employment record". One respondent considered that job specifications are usually detailed and descriptive information which may not be held centrally in the HR department and may not be particularly useful in assisting AIs to halt "rolling bad apples". One respondent noted that some AIs' human resources systems generally capture only an individual's title and department, such that requiring validation on the content on every job position would be administratively burdensome.	To simplify the efforts required and at the same time reflect the job nature of the positions, the "description of role" column will be replaced by "name of business/function" together with an additional column "department" in the table. The information is for identification purpose and it is not expected that detailed job specifications would be provided here.
40.	**Allegations without detrimental findings** One respondent sought clarification on whether "involvement" in an internal/external disciplinary action is intended to capture an investigation where allegations were made against the candidate but no detrimental findings were substantiated against them.	Generally speaking, allegations without substantive findings or those where the investigations are inconclusive are not required to be reported in the MRC template. See #12 for further elaboration on disclosure and provision of updates related to ongoing investigation and #19 for further comments on misconduct reports with undetermined / inconclusive result.
41.	**Enclosure of employee consent** Respondents sought clarification on whether the enclosure of employee consent is required when initiating MRC request to reference providing AI. One respondent indicated preference to	To reduce the administrative burden on the recruiting AI, the IWG may consider whether the consent form should be enclosed with the MRC request, or alternatively, if a standard clause can be included in the MRC request indicating that consent from the employee has been

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	have the consent form attached to the MRC request, while acknowledging that attaching the consent will also create a burden for recruiting AIs.	obtained. The standard clause can be prescribed by the IWG.
42.	**Disclaimer in the MRC request / Indemnification scheme / safe harbour provisions** One respondent suggested that consideration be given to requiring the recruiting AIs to indemnify reference providing AIs against any legal action brought by employees which result from negative information disclosed by the reference providing AI in good faith and in accordance with the MRC Scheme. It was suggested that an industry consistent disclaimer could be included in the template which provides: (a) the information provided is true, complete and accurate according to the reference providing AI's best knowledge; and (b) the recruiting AI takes full responsibility in relying on the information provided in the Template in making its recruitment decision, and the reference providing AIs is excluded from liability in the absence of negligence and bad faith. One respondent also noted that as recruiting AIs are responsible for obtaining written consent from prospective employees to exempt/waive reference providing AIs from contractual obligations which may limit their ability to disclose information regarding the prospective employee (such as confidentiality obligations under exit agreements), i.e. the agreement is between the prospective employee and the recruiting AI, the	The IWG can discuss and formulate the appropriate ways for AIs to delineate responsibility and mitigate potential litigation risks under the MRC Scheme.

#	Comments / questions from respondents	HKMA's response
	reference providing AI may not be able to benefit from the waiver and be released from contractual liabilities. One respondent also suggested that "safe harbour provisions" be set up alongside the proposed MRC Scheme to safeguard the legal interests of AIs.	
43.	**Modification of MRC template** Some respondents asked if the format of the MRC template can be modified. One respondent suggested to have two versions of the MRC template, one for simple cases with "clean" individuals and one for cases with reportable items.	The IWG may refine the format of the MRC template to better suit the needs of the industry, and consider whether two versions of template would be more preferable.
44.	**Right to request MRC copy** Some respondents sought clarification on whether the prospective employee would have the right to request for a copy of his/her MRC information from the recruiting AI and/or the respective reference providing AIs. It seems unfair to the individuals if they have no opportunity to dispute the information provided.	Prospective employees should be given the right to request for a copy of their MRC information. This is in line with Data Protection Principle 6 and section 22 of the PDPO, and in particular in the event that the prospective employee is given negative comment, such that the prospective employee is given the right to request a correction of inaccurate personal data under the PDPO. In general, all AIs should implement measures and have policies and procedures in place to ensure that they can comply with a data correction request made by a job applicant, current or former employee.
45.	**Multiple roles served in the reference providing AI** One respondent sought clarification on whether multiple roles that the individual served in the reference providing AI should all be covered in the MRC template or only the last position is	The template should cover all positions held by the individual at the reference providing AI that fall within the specified period and not only the last position.

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	necessary. One respondent questioned whether the "Reason for the cessation of appointment" column is only applicable to the last position held by the individual within the AI, if the individual has held multiple positions in the same AI during the applicable period.	"Reason for the cessation of appointment" will only apply to the last position held by the individual within the AI if the individual has held multiple back-to-back positions in the same AI during the employment period.
46.	**Suggested amendments to Question 1** One respondent suggested that for consistency, the latter part of Question 1 (where descriptions of details are to be provided) should be answered in table format, with the following columns to be included in the table: (a) background of the matter; (b) the date(s) when the matter occurred; (c) the duration of the matter; (d) the role played by the outgoing employee; (e) the (potential) impact to the market and clients; (f) assessment of materiality; (g) the status of the investigation; and (h) the outcome of the investigation and the basis of conclusion, if the investigation is completed.	The proposed amendments are broadly acceptable. Further refinements on the template can be discussed in the IWG.
47.	**Consolidation with foreign reference check standard forms** One respondent suggested consolidating all information to be acquired or supplied under different MRC regimes into a single template.	As the application of the MRC Scheme is confined to the Hong Kong banking industry at the initial stage, it may not be necessary to have a consolidated template of the different regimes.

#	Comments / questions from respondents	HKMA's response
Q7. Do you have any comments on the proposed duration of MRC information coverage, i.e. 10 years of employment records? **Q8. Do you foresee any difficulties for AIs to maintain 10 years of employment records of their employees for MRC purpose?**		
48.	**Duration of MRC information** Respondents generally considered that for MRC information to cover 10 years of employment records to be burdensome and unduly long as the traditional practice of employment record retention is for 7 years. They noted that the PDPO recommendation is to hold employment related data for no longer than 7 years from the date the employee leaves employment, unless express consent is provided by the employee or that there is a subsisting reason to retain the data for a longer period of time. Respondents noted both operational and resources concerns in retaining employment related data for more than 7 years. A longer period may also deny employees a rehabilitation opportunity.	This proposal of 10 years was made with reference to the current HKMA requirement for individuals to disclose 10 years of employment records in their applications for the positions of directors, CEs, ACEs and EOs at AIs. The PCPD noted that as the MRC Scheme is conducted for the legitimate purposes of tackling the RBA issue and enhancing integrity of the banking industry, there are subsisting reasons for AIs to retain MRC-related employment data for longer than the 7-year retention period applicable otherwise. The HKMA has duly considered the industry's comments and is of the view that the employment records retention period can be reduced to 7 years for Phase 1 and Phase 2 of the MRC Scheme, subject to further deliberation of the IWG.
Q9. Do you have any comments on the requirements to obtain consent from the prospective employee?		
49.	**Refusal to provide consent** Some respondents asked whether an AI can proceed with employment if a prospective employee refuses to provide consent to the MRC process.	While the employment decision is made by the recruiting AI at their discretion, the recruiting AI should consider the reasons behind the refusal to provide consent and whether it casts doubt on the fitness and propriety of the individual. In cases where the recruiting AI decides to proceed with employment without conducting MRC, the justifications for such exemption should be documented.
50.	**Industry consent template for MRC** Most of the respondents considered that having a standard written consent template for MRC would be beneficial so that a	The IWG is invited to take the lead to develop a standard consent template and exploring ways for conducting the MRC Scheme electronically.

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	consistent approach can be adopted across the industry. One respondent suggested to take into account the Electronic Transactions Ordinance and cater for situations where AIs prefer to conduct the MRC Scheme reporting in a paperless way.	
51.	**Withdrawal of consent** One respondent proposed that procedures should be incorporated to provide for situations where a prospective employee subsequently withdraws their consent. One respondent suggested having a standardised notification template which recruiting AIs could use to notify reference providing AIs of the withdrawal and the relevant procedures.	In cases where a prospective employee subsequently withdraws their consent, the recruiting AI should inform the reference providing AI as soon as practicable, so that the reference providing AI would cease to provide MRC information. We welcome the IWG to work out a standardised notification template which recruiting AIs could use to notify reference providing AIs of the withdrawal of consent.
52.	**Making MRC requests to current employers** Some respondents considered that recruiting AIs may face practical difficulties in obtaining the prospective employee's consent to request MRC information from his/her current employer as this would inevitably expose the prospective employee's intention to change job which in turn may affect the current employment relationship if the prospective employee eventually cannot secure a job offer from the recruiting AI, which is a particularly sensitive issue for senior management staff. Without a secure job offer from the recruiting AI, it is understandable that the prospective employee would be reluctant to give consent as it would affect the existing employment relationship. One respondent suggested permitting the prospective employee to join the new bank while	A possible way to address the concern is for the recruiting AI to consult and coordinate with the prospective employee on the appropriate timing for sending out MRC requests. For example, the recruiting AI may first seek MRC information from the prospective employee's former employers, to be followed by the prospective employee's current employer at a later stage, say after he/she has tendered his/her resignation. An illustrative sequence is outlined below: (a) Step 1: Extend an employment offer to the candidate, if applicable, conditioned upon the recruiting AI receiving satisfactory MRC information from his/her existing and former employers; (b) Step 2: Obtain the candidate's consent and request MRC information from his/her former employers; (c) Step 3: After the candidate has tendered his/her resignation, or

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	the last employer verification is pending.	after the candidate's last day with his/her current employer, a MRC request can be sent to the current employer; and (d) Step 4: After MRC information has been received from the current employer and upon completion of assessment by the recruiting AI, a final offer can be issued. The operational details can be discussed and refined by the IWG. To minimise possible disputes and the possibility of rescinding an offer for employment, all AIs are strongly encouraged to complete all the MRC processes before on-boarding the prospective employee such that AIs can make an informed decision of employment with reference to information provided by the reference providing AI(s).
53.	**Finalisation of employment decision** Some respondents asked whether recruiting AIs are required to complete all the MRC processes before making employment decisions, and whether there would be any legal and/or regulatory consequences if the recruiting AI chooses to hire an individual despite being informed about misconduct in the individual's employment history. Some sought guidance on the types of considerations and factors which the HKMA would deem sufficient to justify a recruitment decision.	Recruiting AIs are strongly encouraged to complete all the MRC processes before on-boarding prospective employees. In cases where a recruiting AI would like to advance the employment decision before the completion of the MRC process, it may consider making a conditional offer, or requiring the prospective employee to provide a self-declaration that he/she has not been involved in any misconduct incidents or subject to any material disciplinary actions, while pending the completion of the MRC processes. As mentioned in paragraph 46 of the Consultation Paper, the recruiting AI will have full discretion in making any employment decision. The factors to be taken into consideration when exercising discretion include, among others, the competencies of the individual,

#	Comments / questions from respondents	HKMA's response
		relevant regulatory requirements, and for those prospective employees with negative MRC information, the likelihood of the prospective employee committing misconduct again in the new working environment. It should be noted that the recruiting AI will be ultimately responsible for such a decision, notwithstanding that appointment to some senior positions may also require regulatory approvals.
Q10. Do you foresee any practical issues in reaching out to existing and former employer AIs of the prospective employee in the past 10 years?		
54.	**Completeness of employment records** Some respondents asked whether recruiting AIs are expected to verify details of any "gaps" in prospective employees' employment history, and whether recruiting AIs will be held liable for failing to obtain MRC records for any positions previously held by prospective employees that should be disclosed by the prospective employees during their application process.	The recruiting AI should exercise judgement and make enquiry on the employment gaps of prospective employees where appropriate. Recruiting AIs may also require prospective employees to declare their employment records provided are true and complete.
55.	**Merger and acquisition / dissolvation / revocation / restructuring of AI** Some respondents considered there would be difficulties in obtaining MRC information from AIs that have been merged or acquired by other firms, dissolved or restructured, or whose banking licenses have been revoked.	For AIs that are merged, acquired by other firms, or restructured, etc., the recruiting AI should conduct MRC with them as far as practical and feasible. For AIs that have been dissolved, or whose banking licenses have been revoked, recruiting AIs are not required to obtain MRC information from them as the contact channel may no longer be available. However, AIs are reminded under some circumstances regulatory

#	Comments / questions from respondents	HKMA's response
		approval will be required under section 73 of the BO for employment of bank staff who have served in certain positions of institutions that had been dissolved or whose license had been revoked.
Q11. Do you foresee any practical issues in providing an opportunity to be heard to the prospective employee?		
56.	**Opportunity to be heard** Most of the respondents considered that AIs should not be obliged to provide an opportunity to be heard to the prospective employee in all circumstances on the grounds of possible tipping off; quality of on-going investigation being compromised; and potential breach of secrecy obligations, etc. Some suggested that the right to be heard could be limited to internal investigations only, and exclude disciplinary actions taken by regulators. Respondents generally expressed concerns about AIs facing potential liability claims and litigation risks arising from defamation. One respondent also sought clarification on how the recruiting AI should handle situations where there are contradictions between the information provided by the prospective employee and that by the reference providing AI.	Having considered the industry's comments, the HKMA maintains the view that on the ground of fairness to the prospective employee, an opportunity to be heard should generally be provided, including but not limited to cases where the misconduct incident has been substantiated, or where external or internal disciplinary actions have been taken against the individual. As for cases where there are legal impediments for disclosure to the prospective employee in the course of providing an opportunity to be heard (such as alleged misconduct cases that are still under confidential investigation, cases involving sensitivity concerning secrecy or potential tipping off, and cases with other potential legal implications, etc.), it would be appropriate for the proposed IWG to consider the practical issues in more detail taking into account PCPD's views. In cases where there are contradictions between the information provided by the prospective employee and that by the reference providing AI, the recruiting AI should assess the credibility of the information provided and whether it casts doubts on the honesty and integrity of the prospective employee in making the hiring decision.
57.	**Duty to investigate** Some respondents considered that provision of opportunity to	The provision of opportunity to be heard is a due process aiming to ensure fairness and safeguard the interest of the prospective

#	Comments / questions from respondents	HKMA's response
	be heard will impose additional obligation on the recruiting AI to further investigate if new facts are provided by the candidate which are beyond or in conflict with those included in the MRC Information Template, and this may increase the burden for both the recruiting and reference providing AIs.	employee. It does not necessitate a duty for either the recruiting AI or the reference providing AI to re-open an investigation as it will be up to the recruiting AI to make an employment decision taking into account the MRC information provided by the reference providing AI and any comments expressed by the prospective employee concerned.
Q12. Do you have any other comments in relation to the obligations of recruiting AIs under the MRC Scheme?		
58.	**Information sharing within AI's group** One respondent sought clarification on how the MRC information could be shared with other entities within the AI's group (e.g. affiliates) and used in relation to matters such as an affiliate's decision on whether to hire a particular employee.	AIs are advised to seek their own legal advice on the potential implications of sharing MRC information within the group to ensure such use of MRC information will not contravene any relevant laws and regulations.
59.	**Extent of follow-up actions by recruiting AI** One respondent sought clarification on the extent of follow-up actions required of the recruiting AI after receiving MRC information from reference providing AI, and whether the recruiting AI is deemed to have discharged its obligation if the reference providing AI refuses to provide further details on the grounds of confidentiality (e.g. proprietary business and employees information, weaknesses in internal operations, etc.).	Recruiting AIs are deemed to have discharged their obligations if the reference providing AI did not provide a response within the specified period of one month or a longer period mutually agreed by both parties. Reference providing AIs should make the effort to provide an interim reply if they need more time to provide the requested follow-up information. Generally speaking, reference providing AIs should respond to follow-up questions to facilitate the recruiting AI's reference checking processes as far as practicable. However, there may be circumstances under which a reference providing AI may refuse to provide further information as doing so may reveal confidential and proprietary information about their business and employees (other

#	Comments / questions from respondents	HKMA's response
		than the employee seeking employment with the recruiting AI), as well as other commercially sensitive information which may be irrelevant for the MRC purposes. See also #29.
60.	**Retention period of MRC information** One respondent sought clarification on the retention period required of MRC information obtained from reference recruiting AIs.	The duration of the retention period of MRC information received by the recruiting AI should follow its practices on the retention of other employment or recruitment records.
61.	**Outsourcing** One respondent sought clarification on whether AIs can outsource the MRC process to external services providers to assist them with the process subject to the AIs complying with applicable regulatory requirements.	AIs may outsource their MRC process to external services providers as long as the AIs remain ultimately responsible for ensuring compliance with the relevant supervisory requirements applicable to outsourcing. In particular, AIs should have contractual arrangements and relevant controls in place to safeguard the security and storage of data to prevent data leakage if outsourcing is adopted.
62.	**Delay in provision of feedback from the reference providing AI** One respondent sought clarification on situations where a reference providing AI fails to provide a response on a MRC request within the specified period, and suggested to establish a reporting channel in the event a reference providing AI fails to reply within the specified period. One respondent sought clarification on whether any potential penalty or disciplinary action would be inflicted on reference providing AIs if there is a delay in responding to the MRC request.	As mentioned in paragraphs 50 and 51 of the Consultation Paper, reference providing AIs should normally respond within the specified period. However, if they encounter difficulties which render them unlikely to be able to observe the specified period of one month, they should at least provide an interim reply to the recruiting AI on the reasons why they could not respond to the request in time, together with an estimated timeframe for when a response can be made. The recruiting AI would be considered to have discharged its obligation under the MRC Scheme if it does not receive any MRC information or interim reply from the reference providing AIs after the specified period of one month or a longer period mutually agreed by both

#	Comments / questions from respondents	HKMA's response
		parties. In cases where AIs observe repeated failures of a particular AI to respond to MRC requests, such a matter can be raised to the IWG for discussion and any unresolved matter can be brought to the attention of the HKMA through the IWG. Repeated failures may indicate potential weaknesses on the governance arrangements as well as the internal controls and procedures of the AI, and the HKMA may follow up with the AI concerned accordingly.
63.	**Contact points at AIs for the MRC Scheme** Some respondents asked about ways to ensure timeliness in receiving MRC information.	We expect the IWG to work out a contact list to facilitate the operation of the MRC Scheme, such that enquiries can be made promptly, via email or other means. As set out in paragraph 58 of the Consultation Paper, going forward, the industry is encouraged to consider developing application programming interface (API) based application or other advanced technology such as blockchain based solution for exchange and maintenance of MRC information.
64.	**Negative MRC information received after the employee is onboard** One respondent asked if the recruiting AI receives subsequent negative MRC updates concerning a candidate who is already on board the recruiting AI, whether the recruiting AI is obliged or expected to re-assess the fitness and propriety and possible termination of the employment.	AIs will have the discretion to decide whether to rescind an offer for employment or to continue to proceed with the employment upon receipt of negative MRC information after on-boarding of the employee. If AIs choose to continue with the employment notwithstanding the negative information, AIs should document the justifications and should take such negative MRC information as a red flag that may warrant a greater scrutiny on possible conduct risks that may be posed by such individuals. Depending on the nature and severity of the information, this should inform AIs of possible

#	Comments / questions from respondents	HKMA's response
		mitigating measures.
65.	**Data breach** One respondent sought clarification on the notification requirements on the recruiting AI if there is a data breach of MRC information at the recruiting AI, such as whether it is necessary to inform the reference providing AI of such a breach.	In general, AIs should comply with the relevant laws and regulations in relation to data security. AIs should seek legal advice on the potential implications of a data breach.
Q13. Do you have any comments on the requirement for the reference providing AIs to respond to MRC requests within 10 working days?		
66.	**Length of time to respond to MRC request** Most of the respondents considered that 10 working days would not be sufficient for a reference providing AI to respond to the MRC request, as some AIs may have lean HR department setup where handling of staff records may involve other functional department within the AI. Some respondents considered imposing the MRC Scheme would cause a delay in the hiring processes.	To avoid undue delay to the hiring process, it is important and necessary to strike a balance between AIs' operational needs and efficiency in handling MRC requests. Taking into account industry concerns, the response time had been lengthened to one month. To facilitate timely receipt of MRC requests, the HKMA encourages the industry to set up and maintain a list of contact points of individual banks for the purpose of MRC process to facilitate efficient communication and information exchange among AIs. Refinements to the response time can be considered by the IWG having regard to industry feedback and operational experience.
Q14. Do you have any comments on the requirements for reference providing AIs to provide updated MRC information to recruiting AI?		
67.	**Corporation in the process of applying banking licence** One respondent considered that AIs should not be required to respond to MRC request made by a corporation that is still in the process of applying for a banking licence.	Corporations in the process of applying for a banking licence does not fall within the scope of MRC and thus reference providing AIs are not obliged to provide reference information to such corporations. After a corporation has obtained a banking licence, they may consider conducting MRC on its in-scope personnel.

#	Comments / questions from respondents	HKMA's response
68.	**Providing update on MRC information** Some respondents considered burdensome for reference providing AI to verify the employment status of former employees with recruiting AIs, especially those of jumpier employees, before providing an update on MRC information. One respondent suggested the IWG to develop standard templates for the notification procedures to ensure efficiency and reduces the administrative burden of AIs.	To alleviate the operational burden on the reference providing AI and to facilitate follow-up by the recruiting AI, it is suggested that, when responding to the MRC request, reference providing AIs may also indicate whether they expect an update to be provided later on, with an approximate indication on the time when such an update is expected. The recruiting AI can then let the reference providing AI know if the prospective employee has been on-board and further approach the reference providing AI for update if needed. If the prospective employee leaves the recruiting AI before any updated MRC information is provided, then the recruiting AI should inform the reference providing AI so that no further MRC information will be provided to the recruiting AI. In cases where the recruiting AI receives an update from reference providing AIs on individuals who no longer work in the recruiting AI, they should notify the reference providing AI of such but do not have an obligation to identify the current employer of the individual. The IWG may refine the notification procedures and develop relevant standard templates. The application of these arrangements can be revisited and refined having regard to operational experience during the Phase 1 review.
69.	**Scenarios which warrant an MRC update** Some respondents sought clarifications on the types of scenarios which warrant the provision of an update by the reference providing AI. Respondents considered that where a reference providing AI has notified the recruiting AI of an	An MRC update should be provided by reference providing AIs if it may lead to substantive changes to the reference information previously provided. In determining whether an update is necessary, the reference providing AI should consider factors including the role of the former employee in the misconduct, and the seriousness of

#	Comments / questions from respondents	HKMA's response
	ongoing investigation into an individual and that the investigation subsequently concludes that the individual has not committed misconduct, the reference providing AI should notify the recruiting AI of this fact. Respondents also sought clarification on whether it is necessary to provide an update if the individual is not the subject of an investigation.	the incident, etc.
70.	**Liability on failure to update** One respondent sought clarification on situations where a misconduct is recently discovered or falls within the scope of reportable information due to a change in laws and regulations, whether reference providing AIs are required to provide an update and if they are subject to any liability if they fail to do so.	For misconduct that is recently discovered or falls within the scope of reportable information due to a change in laws and regulations, reference providing AIs should consider the factors indicated in #68 in determining whether it is necessary to provide an update. Since the MRC Scheme is intended to be an industry-led initiative instead of a supervisory requirement, AIs are encouraged to comply with the requirements stipulated in the MRC Scheme to ensure its effectiveness.
Q15. Do you have any other comments in relation to the obligations of reference providing AIs under the MRC Scheme?		
71.	**Work performance** One respondent sought clarification on whether it is required to disclose an individual's work performance under the MRC Scheme.	The MRC Scheme focuses on the conduct aspect of prospective employee. Work performance that is non-conduct related would not fall within the context of "bad apple" and thus will not be required to be disclosed under the MRC Scheme.
Q16. Do you have any comments or foresee any practical issues in fulfilling the operational requirements?		
72.	**Secured email** One respondent asked if some technological alignment may be needed between reference providing AIs and recruiting AIs if they need to exchange secure emails.	AIs should use secure channels for exchanging MRC information. Secure email (e.g. ICLNet secure email) is an example of such channel. Details can be worked out by the IWG.

#	Comments / questions from respondents	HKMA's response
		As set out in paragraph 58 of the Consultation Paper, going forward, the industry is encouraged to consider developing application programming interface (API) based application or other advanced technology such as blockchain based solution for exchange and maintenance of MRC information.
Q17. Do you have any comments on the proposal for an internal network of an industry association to facilitate the exchange of requests and information under the proposed MRC Scheme?		
73.	**Challenges in adopting API** Respondents generally considered there are technical challenges in implementing API for the MRC Scheme. Using the API framework would also require further discussion on the types of and the extent of information that AIs are expected to share. Due consideration should be given to data privacy concerns and compliance with the PDPO. Respondents also expressed difficulties with obtaining extra resources to establish relevant technicalities.	In view of the potential technical challenges and resources constraints faced by AIs, exploration of the feasibility of a computer network at the industry association level may be deferred to the longer run taking into account AIs experience in operating the MRC Scheme as well as market feedback and developments. The IWG may further consider the matter.
Q18. Do you have any comments on implementing the proposed MRC Scheme through an industry-led effort with the endorsement of the HKMA, rather than a supervisory requirement upfront?		
74.	**Retention of employees' personal data** One respondent sought clarification on the requirements regarding the retention of employees' MRC data and those from unsuccessful job applicants, and the right of deletion of their personal data.	The PCPD has provided comments on these areas which are summarised below - All AIs should implement a data retention policy for MRC data. Regarding the personal data of an unsuccessful job applicant, generally speaking, all recruiting AIs should not retain the same for a

#	Comments / questions from respondents	HKMA's response
		period longer than 2 years from the date of rejecting the applicant unless there is a subsisting reason that obliges the recruiting AI to retain the data for a longer period or that job applicant has given consent. Hence, recruiting AIs, upon receiving MRC information from reference providing AIs, shall not keep the data of unsuccessful job applicants for more than 2 years unless there are special circumstances warranting them to do so. These special circumstances, if any, should be clearly documented. All AIs should take all practicable steps to maintain the accuracy of personal data retained for purposes that continue after an employee has left the AI.
75.	**Monitoring AIs' compliance with MRC Scheme** Respondents sought clarification on how the HKMA will monitor AIs' compliance with the MRC Scheme.	It is proposed that a review will be conducted two years after the implementation of Phase 1 to assess AIs' operation experience and effectiveness of the MRC Scheme. In the meantime, the IWG may also serve to solicit industry feedback on MRC implementation issues on an ongoing basis. If there is any matter that warrants further escalation, it could be made to the HKMA through the IWG.
76.	**Supervisory approach** One respondent considered that the industry-led approach provides flexibility, and it would allow AIs to develop industry standards in a gradual and progressive manner. However, given the wide scope of Phase 2, implementation via a supervisory requirement would enhance certainty and avoid unnecessary disputes.	The HKMA would take into account the comments received from the review of Phase 1 and the consultation for Phase 2, and consider the approach best suited for the MRC Scheme going forward.

#	Comments / questions from respondents	HKMA's response
77.	**Role of HKMA** One respondent sought clarification in relation to industry-led approach on the meaning of "endorsement by the HKMA" and the role of HKMA in such an approach.	The HKMA invites HKAB to set up an IWG to formulate, within 6 months of the issuance of the Conclusions Paper, operational details of the MRC Scheme, in accordance with the principles set out in the Conclusions Paper, for endorsement by the HKMA. The IWG will also serve to review implementation issues on an ongoing basis during Phase 1. The HKMA will facilitate discussion among industry participants and provide guidance on the development and implementation of the MRC Scheme as necessary, and monitor the effectiveness of the MRC Scheme.
Q19. Do you have any comments on confining the mandatory reference checking within the Hong Kong banking industry at the beginning?		
78.	**Implementation of MRC within the Hong Kong banking industry** Respondents generally agreed to confine the MRC Scheme to the Hong Kong banking industry initially and further expand its coverage to other financial sectors and other jurisdictions in the longer run. Some respondents suggested to conduct a pilot MRC Scheme amongst major retails banks before extending it to all AIs to better address any operational hurdles before the Scheme is extended to the entire banking industry.	Taking into account feedback of some respondents that the turnover of Phase 1 personnel would likely be low given their seniority, it is considered undesirable for the scope of the MRC Scheme to be further confined to only a few major retail banks at the beginning as doing so will render the number of cases even lower for the MRC Scheme to generate any meaningful insight. Moreover, doing so would make it difficult to assess the effectiveness of the MRC Scheme in foreign bank branches. We therefore consider that the confined coverage of Phase 1 would be sufficient to serve the purpose of having some form of a "pilot scheme" before the further expansion of the Scheme to Phase 2. The feedback received on Phase 1 implementation can serve to identify room for further refinement for Phase 2 implementation.

#	Comments / questions from respondents	HKMA's response
Q20. Do you have any other comments on the proposed MRC Scheme and other suggestions that can help to tackle RBA phenomenon?		
79.	**PCPD comments** Some respondents considered the proposed MRC Scheme may potentially have implications for individuals' privacy, and as such it may be appropriate for the HKMA to consult with the Office of the Privacy Commissioner for Personal Data.	The PCPD had provided valuable comments to the Consultation Paper, which have been taken into account. Details of PCPD's comments can be found at **Annex 3 – Summary of Comments of the PCPD in response to Consultation on Implementation of MRC Scheme**.
80.	**Request for MRC information for prospective employees not yet in scope** One respondent noted that recruiting AIs shall refrain from requesting MRC information for prospective employees that are not yet in scope so that resources can be focused on the Phase 1 and Phase 2 individuals.	To avoid a sudden surge of MRC requests, AIs are suggested to follow the implementation timeline and the stipulated coverage of personnel under Phase 1 and Phase 2 of the MRC Scheme.
81.	**Use of CR** One respondent considered that the use of CR would be operationally more efficient especially for the implementation of Phase 2 which involves a much broader scope of employees.	As mentioned in paragraph 26 of the Consultation Paper, the adoption of CR can be explored in the longer term if necessary. However, the implementation of a CR aiming at covering all existing and previous employees of AIs in Hong Kong will be operationally more complex, involving higher costs and more efforts from AIs, especially having regard to the necessary arrangements to protect personal data privacy. The governance, operational and funding arrangements of a CR will need to be carefully designed and implemented. Subject to industry-wide support, the IWG could conduct a feasibility study on the potential for a central register for the MRC Scheme to be developed and operated by the industry.

#	Comments / questions from respondents	HKMA's response
82.	**CR links with entities outside Hong Kong** One respondent suggested the HKMA could also work with overseas regulators, and exchange data on RBAs, should the MRC Scheme be extended to cover overseas entities in the future.	The proposal may be further explored if a CR is to be established subject to the operational experience. However, there is currently no plan for doing so as the MRC Scheme will be confined to the local banking sector initially.
83.	**MRC information in reference letter** One respondent proposed to include MRC information in reference letters for departing employees as a standard practice, especially for those without any misconduct concerns. This will enable the individuals to share MRC information with prospective employers as soon as possible, hence reducing the number of MRC requests reference providing AIs may receive.	The IWG may consider whether to adopt the proposed approach for inclusion of MRC Information in reference letter may assist in expediting the MRC process. However, it should be noted that the reference letters issued to departing employees at the time of departure might not have covered investigations conducted subsequent to the departure of the employees from the AIs concerned.
84.	**Publicity campaign** One respondent suggested the HKMA to conduct continuous publicity campaigns to promote the MRC Scheme requirements so that AIs, as well as prospective employees, are more aware of their obligations and the impact of the MRC Scheme.	Given the MRC Scheme serves to improve the current reference checking process of AIs thereby addressing the RBA phenomenon in the industry, we welcome any industry-led education and communication programme to promote awareness of the MRC Scheme among industry participants. Industry associations may consider organising workshops and training programmes for relevant personnel in AIs so as to get them better prepared for the implementation of the MRC Scheme.

Annex 3 – Summary of Comments of the PCPD in response to the Consultation on Implementation of Mandatory Reference Checking Scheme

General Comments

1. The overriding principle is that any measures that may intrude personal data privacy should be necessary, appropriate and proportionate to the purposes to be achieved.

2. The PCPD fully appreciates the adverse consequences of RBA and the operational, reputational and financial risks that would be brought to the recruiting banks as depicted in the Consultation Paper. The limitations of the existing mechanism (which is not aimed specifically at tackling the RBA phenomenon) has also given rise to a pressing need for the proposed MRC Scheme.

3. The PCPD also notes that the MRC scheme will adopt a proportionate approach and confine to specific categories of employees of the banks whose conduct and integrity are more important and the need for addressing the RBA phenomenon is of relatively higher priority. The PCPD acknowledges that the information about an employee's conduct would be important to the recruiting banks in relation to the inherent nature of the job for which the employee is appointed.

Specific Comments

Collection of the specific information regarding the conduct of the prospective employee

4. The PCPD notes that under the MRC scheme, information regarding an employee's conduct will be collected by his/her employer throughout the employment and the records will be retained by the employer for 10 years.

5. While it is reasonable and legitimate for employers to maintain employment records and information an employee's conduct (such as written records of disciplinary proceedings) in the course of employment, Data Protection Principle (DPP) 1(3) requires data users (i.e. the employers) to take all practicable steps to ensure that employees are informed of

certain matters in relation to the collection of their personal data, such as the purpose for which the data is to be used and the classes of persons to whom the data may be transferred.

6. Hence, upon implementation of the MRC Scheme, employers shall inform their employees that the type of data (including specific information regarding employees' conduct) that will be collected, how they will use the data and how they will transfer the data to prospective recruiting banks for reference checking. This notification requirement can be made in the form of a written Personal Information Collection Statement (PICS) pertaining to employment.

Accuracy and Duration of Retention of the employees' personal data

7. The proposed duration of MRC information would cover the prospective employee's employment records in the past 10 years up to the date of application for employment. The PCPD notes that this proposal is in line with the HKMA's existing requirement that 10 years of employment records need to be disclosed by applicants in their applications to take up positions of directors, chief executives, alternate chief executives and executive officers.

8. For the purpose of the MRC scheme, all banks would have to maintain employment records of their employees who have ceased to be employed by the banks for a period of at least 10 years counting from the date of the employees' departure from the banks.

9. Pursuant to DPP2(2), all practicable steps must be taken to ensure that personal data shall not be retained longer than is necessary for the fulfilment of the purposes (including directly related purposes). Section 26 of the PDPO also requires that all practicable steps shall be taken to ensure erasure of personal data that is no longer required unless it is prohibited by law, or in the public interest not to do so. Contravention of section 26 of the PDPO is liable to criminal prosecution.

10. Generally speaking, an employer should implement a written data retention policy that specifies a retention period of no longer than seven years in respect of employment-related data held about an employee from the date the employee leaves employment unless there is a subsisting reason that obliges the employer to retain the data for a longer period or the former employee has given prescribed consent for the data to be

retained beyond seven years. As the MRC Scheme is for the legitimate purposes of tackling RBA issue and enhancing the integrity of the banking industry, the PCPD generally considers it as a subsisting reason and in the public interest for the employer to retain the data for a longer period.

11. Having said that, the PCPD considers that it would be fair if the employees are given a right to request for deletion of their data in specified circumstances, for example retirement and permanent departure from Hong Kong. Under these circumstances, it would no longer be necessary for the employers to retain the personal data of those employees.

12. Regarding the personal data of an unsuccessful job applicant, generally an employer should not retain the same for a period longer than two years from the date of rejecting the applicant unless there is a subsisting reason that obliges the employer to retain the data for a longer period or the applicant has given prescribed consent. Hence, the recruiting banks, upon receiving the information from the reference providing banks, shall not keep the data for more than 2 years unless there are special circumstances warranting it to do so. These special circumstances, if any, shall be clearly documented.

13. The PCPD notes that all information provided under the proposed MRC Scheme should be supported by written documents, and to the best knowledge of the reference providing banks are being true, fair, complete, accurate and capable of substantiation. The PCPD agrees that accuracy and completeness of the employment records are imperative to the successful implementation of the MRC Scheme, not to mention that data accuracy is an essential element from the perspective of personal data privacy. In accordance with the requirements under DPP2(1)(a), an employer should take all practicable steps to maintain the accuracy of personal data retained for purposes that continue after the employee has left employment.

Consent by the Prospective Employee

14. In general, DPP3 provides that personal data shall not be used (including disclosed or transferred) by a data user (e.g. a frontline professional) for a new purpose without the express and voluntary consent of the data subject.

15. The PCPD notes that it is proposed that written consent should be obtained from the prospective employee to, *inter alia*, authorise the recruiting bank to conduct reference checking with his/her current and

former employer banks and authorise the reference providing banks to disclose his/her employment records to the recruiting bank. The PCPD takes the view that obtaining an informed consent from the prospective employee is necessary, as this would ensure that the data subject consents to such disclosure and that the former employers could rely on the consent to proceed with the reference checking.

16. As the purpose of the MRC scheme is for the prospective employer to check the integrity of the prospective employee in a recruitment process, the prospective employer shall not use (including disclosure or transfer to any third parties) the employee's personal data for a new purpose. Noting that the proposed employee's consent only covers the prospective employer to conduct reference checking and the former employers to provide the records to the prospective employer, any further use of the employees' data for a purpose not directly related to these purposes would be considered as a new purpose and a fresh prescribed consent shall be obtained from the employee concerned.

An opportunity to be heard

17. It is noted that under the proposed MRC Scheme, the recruiting bank would provide the prospective employee with an opportunity to be heard in case there is any negative information from the reference providing banks. From the perspective of personal data privacy, this proposal would be in line with DPP6 and section 22 of the PDPO, which provides data subject a right to request correction of inaccurate personal data. As a matter of good practice, employers should implement measures and have policies and procedures in place to ensure that they can comply with a data correction request made by a job applicant, current or former employee.

Security of the personal data

18. The PCPD notes that under the proposed MRC Scheme, all banks should put in place adequate internal systems and controls, policies and procedures to safeguard integrity and confidentiality of information obtained and processed during the MRC process.

19. Pursuant to DPP4(1)(a), the kind of data and the harm that could result in case of unauthorized or accidental access are some of the factors to be considered when specifying the degree of security measures required. Hence, safeguards or security treatment should be commensurate with the

sensitivity of the personal data. As the employment records and conduct of an employee are rather sensitive and may bring grave harm to a data subject if leaked, it is important to put in place adequate security measures to ensure that the data is securely kept and transmitted.

20. Adequate security measures shall be in place to prevent unauthorized access to any computer system, file(s) and/or cabinet(s) storing the employees' personal data. This would include, but not limited to, (1) proper access control defining who can access the data, such as multi-factor authentication before retrieving any data inside in the system and access to data by designated staff only for a legitimate purpose; (2) locking the cabinet(s) and (3) encrypting the data if needed to be transmitted and during storage.

Data Ethics

21. In addition to compliance with the requirements under the PDPO, data users shall also uphold the principles of accountability and data ethics when collecting and using personal data. It would therefore be important to observe the principles of explainability and transparency having regard to the rising expectations of the public. The ethical elements of data protection (namely being fair, respectful and beneficial) will bridge the gap between legal requirements and stakeholders' expectations.