

## Consultation Conclusion on MRC Scheme

#	Comments / questions from respondents	HKMA's response
<b>Q1. Do you have any comments on the proposed phased implementation approach?</b>		
1.	No particular comments received.	N/A
<b>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?</b>		
2.	<p><b>Treatment of existing employees</b> 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.</p>	The MRC Scheme primarily serves to facilitate AIs in making employment decisions, thus we consider it not necessary for AIs to conduct MRC on existing staff who currently hold in-scope roles. The MRC Scheme will only apply to new hires but not to existing staff employed by AIs who currently hold in-scope roles.
3.	<p><b>Application on client-facing staff</b> Most of the respondents considered having the MRC Scheme cover junior staff would induce a heavy burden on banks and would significantly increase the number of employees that are subject to the MRC process. They considered there is no pressing need to address RBA for junior staff. The Scheme should be confined to staff which provides advisory services or those receiving certain types of performance-based remuneration.</p>	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 roles that provide advisory services or receive certain types of performance-based remuneration and are lower for junior staff, we consider that the coverage of the MRC Scheme in respect of client-facing staff could initially be confined to those providing advisory services and/or receive performance-based remuneration in relation to sales-related activities. Details can be decided when Phase 2 of the MRC Scheme is to be launched.
4.	<p><b>Intragroup move / promotions / cross-border application</b> 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 staff who are being promoted to in-scope roles. Some also had questions about the Scheme's cross-border application, say for staff based outside Hong Kong but with regional oversight functions in Hong Kong.</p>	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 use alternative ways from the MRC Information Template to perform reference checks, such as by making use of the 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.

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		<p>For individuals 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.</p> <p>At the initial stage, we are of the view that the MRC Scheme should be applied to AIs in Hong Kong and not their overseas branches and head offices given potential cross-border issues. The HKMA will keep in view the implementation of the Scheme and consider whether to extend its coverage subject to discussion with the industry.</p>
5.	<p><b>Contract or temporary staff</b> Some respondents considered that applying MRC to temporary and contract workers may be disproportionate to the duration of their tenure with the recruiting AI. Some considered that such staff are often recruited to promptly fill temporary vacancies, and that requiring recruiting AIs to comply with the MRC Scheme requirements with respect to such staff 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.</p>	<p>The proposed in-scope personnel, especially those under Phase 1, are generally those who may pose significant issues if RBA 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 Scheme irrespective of the length of the employment.</p> <p>Staff 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. 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 #52 on finalisation of employment decision for details.</p>
6.	<p><b>Information in relation to previous out-of-scope role</b> 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.</p>	<p>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.</p>

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7.	<p><b>Alignment of scope of Phase 1 and Phase 2 personnel with existing licensing and approval regimes of the HKMA and other regulators</b></p> <p>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.</p>	<p>We consider that the MRC Scheme can 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.</p> <p>Given the MRC Scheme has yet to be implemented, further considerations about potentially streamlining the MRC Scheme with other related licensing requirement could be considered in the longer term taking into account implementation experience of the Scheme.</p>
8.	<p><b>Overlap of heads / deputy heads of key supporting functions with s72B managers under the BO</b></p> <p>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 s72B 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.</p>	<p>For simplicity and to avoid unnecessary interpretation issues, we agree 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 explored in the review to be conducted prior to Phase 2 implementation.</p>
9.	<p><b>Inclusion of ROs under the MPFSO under Phase 1</b></p> <p>One respondent noted that since EOs under the BO and ROs under the IO fall under Phase 1 and Phase 2 of the MRC Scheme respectively, ROs under MPFSO should also be covered under the Scheme.</p>	<p>As ROs under the IO and the MPFSO are important supervisory roles in AIs, we will bring ROs under the IO and the MPFSO under Phase 1 of the Scheme.</p>
<p><b>Q3. Do you have any comments on the proposed timeframe for implementation of Phase 2 following the launch of Phase 1?</b></p>		

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10.	<p><b>Phase 1 implementation</b></p> <p>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.</p>	<p>Upon the publication of the consultation conclusion, there will be a 12 months' transition period before the MRC Scheme is implemented. Meanwhile, as the MRC Scheme should be introduced as an industry-led initiative, the HKMA will explore with HKAB for HKAB to set up an Industry Working Group (IWG) to formulate the operational details of the MRC Scheme in accordance with the principles set out in the consultation conclusion. Such operational details should be finalised within 6 months of the publication of the consultation conclusion for endorsement by the HKMA. It is envisaged that, following the implementation of the Scheme, the IWG will also take the lead in conducting the review on the implementation of Phase 1 of the MRC Scheme.</p>
11.	<p><b>Phase 1 review and Phase 2 implementation</b></p> <p>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 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 staff 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.</p>	<p>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 connection with the review on Phase 1, following which the operational details of Phase 2 can be fine-tuned and confirmed for implementation accordingly.</p>
<p><b>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?</b></p>		
12.	<p><b>Disclosure and provision of updates related to ongoing investigation</b></p> <p>Most of the respondents expressed concerns about disclosing open investigations, as they may expose an AI to potential litigation risks and affect ongoing investigations, in particular</p>	<p>While the MRC Scheme does not mandate the reporting of ongoing investigations and allows flexibility for reference providing AIs to exercise judgement on the type of investigation information to be provided under "any other additional information relevant to the fit and proper assessment", we consider that the IWG can further deliberate and determine whether ongoing investigations are to be disclosed and the</p>

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	<p>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 pose a bias against and constitute unfair treatment to the individuals concerned. Some respondents considered that disclosing information about concluded cases only can avoid the risks of sharing inaccurate statements and sought clarification on the timeframe to provide notifications or an update to recruiting AIs once an investigation is concluded.</p>	<p>criteria to consider when making such disclosure. We consider there would be merit in reporting ongoing investigations to the extent that they are relevant, and that such disclosure is feasible and lawful, so as to minimise the chance of an AI recruiting a “bad apple”. To address concerns about bias and unfair treatment to the individual concerned, as proposed in para 44 of the Consultation Paper, the recruiting AI should give an opportunity to be heard to the individual in case any negative information is received from reference providing AI(s).</p> <p>Reference providing AIs are suggested to provide an update to a recruiting AI upon conclusion of investigation cases where the individual is found to have committed serious misconduct within 20 working days after the cases are concluded.</p>
13.	<p><b>Internal informal review</b> Some respondents sought clarification on whether investigations cover internal informal reviews.</p>	<p>In considering whether internal informal reviews, or other forms of reviews, should be covered under the MRC Scheme, AIs should consider the context of such a review. 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 investigation accordingly.</p> <p>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.</p>
14.	<p><b>Employees working in multiple entities within a group</b> 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.</p>	<p>The reference seeking 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. 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.</p>

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15.	<p><b>Reason for the cessation of appointment</b></p> <p>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 concerned.</p>	<p>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.</p> <p>The IWG is welcomed to work out any reference template for standardisation of reply.</p>
16.	<p><b>Scope of involvement</b></p> <p>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.</p>	<p>Reportable information in MRC should be confined to cover employees who committed misconduct. Employees who were accomplices in the misconduct activities are also within scope. 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.</p> <p>The IWG is invited to develop more detailed and practical instructions together with examples on what constitutes reportable information for reference by the industry.</p>
17.	<p><b>Materiality Threshold</b></p> <p>Some respondents considered that defining a materiality threshold for reportable misconduct would be useful, such that reportable misconduct would be confined to those of a serious nature. One respondent suggested to attach an amount threshold (e.g. beyond a HKD amount threshold in a fraud case).</p>	<p>We are of the view that setting up a simple monetary threshold may not be appropriate, 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. Nonetheless, we agree 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. More practical instructions together with examples on what constitutes reportable information can be further deliberated by the IWG.</p>
18.	<p><b>Incidents related to honesty, integrity or matters of similar nature</b></p> <p>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".</p>	<p>We agree 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.</p>

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19.	<p><b>Misconduct report filed with the HKMA</b>            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.</p>	<p>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.</p>
20.	<p><b>Sexual harassment/bullying</b>            One respondent asked whether sexual harassment or bullying should fall under conduct matters and be reportable under the MRC Scheme.</p>	<p>Sexual harassment or bullying should be considered misconduct activities and should be included as reportable matters under the scope of MRC.</p>
21.	<p><b>Scope of "any other information"</b>            In relation to question 2 of the MRC Information Template, one respondent sought clarification on what constitutes "any other information" that is relevant to the fit and proper assessment of an individual.</p>	<p>The reference providing AI is expected to provide any other information that it reasonably considered to be relevant to recruiting 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:</p> <ul style="list-style-type: none"> <li>(1) occurred or existed               <ul style="list-style-type: none"> <li>(a) within the specified period before date of request for a reference; or</li> <li>(b) between the date of request for the reference and the date the reference providing AI provides the reference; and</li> </ul> </li> <li>(2) is related to misconduct that is of a material or serious nature.</li> </ul>
22.	<p><b>Reference providing AIs to pass on previously obtained MRC information</b>            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.</p>	<p>We consider that the "recycling" of MRC information previously obtained from other AIs may not be 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 within 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.</p>

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23.	<p><b>Question 2 in the MRC Information Template</b> One respondent considered "fit and proper" can be interpreted 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.</p>	<p>Given the interpretation of "fit and proper" may have a broader and slightly varying meaning in different regulatory regimes, question 2 will 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?"</p>
24.	<p><b>Confidentiality obligations</b> 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.</p>	<p>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.</p>
25.	<p><b>Disclosure of confidential and proprietary information to competitor AIs and the public</b> Some respondents noted that the disclosure of misconduct activities may unveil details about the reference providing AI's proprietary information, internal control deficiencies and business secrets.</p>	<p>Reportable information should focus on the misconduct activities of the individual concerned. Proprietary information, internal control failures and business secrets, etc. need not be provided unless they are evidential materials to the investigation of the misconduct case.</p>
26.	<p><b>SFC notification requirements also applies to registered institutions (RI)</b> 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</p>	<p>For AIs which are RIs under the Securities and Futures Ordinance (SFO), they are required to report to the HKMA and the SFC any investigation conducted on an EO within 6 months preceding the cessation of appointment of that individual as an EO. Such a requirement has been communicated in our circular dated 31 May 2019.</p> <p>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 Scheme will be subject to discussion with other relevant stakeholders.</p>



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	with respect to investigations, and ensure a consistent standard is applied across the financial industry.	
27.	<p><b>Investigations which commenced after departure of individual</b></p> <p>The Consultation Paper proposes that where an investigation or proceeding concerning the individual 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.</p>	<p>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 consultation comments, we propose 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 #47. See also #12 on the disclosure and the provision of updates related to ongoing investigations.</p>
28.	<p><b>Level of detail</b></p> <p>One respondent sought clarification on the level of detail required in the MRC Information Template.</p>	<p>A reference should provide a factual description of the incidents, the outcome of any investigation and the disciplinary action, if applicable. We would not normally expect disclosures to include proprietary or commercially sensitive information.</p>
29.	<p><b>Supporting documents</b></p> <p>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.</p>	<p>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.</p>
<b>Q5. Do you have any comments on the proposed scope of reportable internal and external disciplinary actions to be covered under the MRC Scheme?</b>		
30.	<p><b>Reduction in remuneration arising from matters other than misconduct</b></p> <p>One respondent sought clarification on whether remuneration reductions arising from factors such as the unsatisfactory performance of the individual, economic conditions, or a</p>	<p>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 Scheme.</p>

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	change in his/her role or responsibilities would be counted as a reportable item under the MRC Scheme.	
31.	<b>Definition of claw-back of remuneration</b> Some respondents sought clarification on the definition of claw-back of remuneration.	For the purpose of the MRC Scheme, claw-back of remuneration refers to any portion of an individual's unvested remuneration that is forfeited or reduced, or where actual payment of yet unpaid remuneration is withheld or reduced, as a result of misconduct.
32.	<b>Internal disciplinary actions</b> Some respondents sought clarification on whether suspensions pending investigations, verbal warnings, leave 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.	The definition of internal disciplinary actions may vary among different AIs. For the purpose of the MRC Scheme, internal disciplinary actions 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); reduction or claw-back of remunerations (including salary, commissions, bonuses, etc.); and suspension and dismissal as a result of such misconduct. For the purpose of MRC Scheme, internal disciplinary actions are not expected to include managerial coaching and counselling, suspensions pending investigations, or leave taken while an investigation is being carried out.
33.	<b>External disciplinary actions</b> 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 against the individual by regulatory bodies, industry associations and professional bodies for the position that the individual held during his/her employment period at the reference providing AI. 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. In any case, recruiting AIs may conduct a search on external disciplinary actions that are publicly available according to their own policies and procedures.
34.	<b>Removal of internal disciplinary actions</b> 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.	We disagree with removing internal disciplinary actions. Internal disciplinary actions stem from a breach of an AI's internal policies and procedures and would be considered conduct matters. We expect reference providing AIs to exercise judgement and consider the substance of the matter to decide whether to report the item under the MRC. See #32 on internal disciplinary actions under the MRC Scheme.

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		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.
35.	<p><b>Grace period</b> 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.</p>	<p>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.</p> <p>The IWG may work out suitable transitional arrangements for AIs which may not have retained records for a 7-year period before the implementation of the MRC Scheme.</p>
<b>Q6. Do you have any comments on the proposed MRC Information Template in Annex 2 to this paper?</b>		
36.	<p><b>Definitions of terms used in the MRC Scheme</b> Some respondents requested for definitions of the various terms used in the MRC Information Template, to avoid ambiguity in implementing this template in practice.</p>	While the Consultation Paper and Consultation Conclusion has elaborated HKMA's view on key matters on the MRC Scheme, it is suggested that the IWG could consider to formulate a list of abbreviations / definitions for the implementation of the MRC Scheme.
37.	<p><b>Textual suggestions on template</b> One respondent proposed some textual changes to the first paragraph of the template:</p> <ul style="list-style-type: none"> <li>• 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."</li> <li>• The first sentence is suggested to be amended to read "We have made a conditional offer of employment to the following individual...".</li> </ul>	Textual amendments have been made to the template taking into account respondents' comments. Further refinements can be considered by the proposed IWG.

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38.	<p><b>Job specifications</b>  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.</p>	<p>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 are to be provided here.</p>
39.	<p><b>Allegations without detrimental findings</b>  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.</p>	<p>Allegations without detrimental findings or those where the investigation conclusions 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.</p>
40.	<p><b>Enclosure of employee consent</b>  Respondents sought clarification on whether the enclosure of employee consent is required when initiating MRC request to reference providing AI.</p>	<p>To reduce the administrative burden on the recruiting AI, it is not necessary for the recruiting AI to enclose a copy of the employee consent in the MRC request, but the recruiting AIs should have obtained the prospective employee's consent before initiating a MRC request. A standard clause can be included in the MRC Information Template indicating that consent from the employee has been obtained. The standard clause can be prescribed by the proposed IWG.</p>
41.	<p><b>Disclaimer in the MRC request / Indemnification scheme / safe harbour provisions</b>  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</p>	<p>The proposed IWG can discuss and formulate the appropriate ways for AIs to delineate responsibility and mitigate potential litigation risks under the MRC Scheme.</p>

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	<p>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:</p> <p>(a) the information provided is true, complete and accurate according to the reference providing AI's best knowledge; and</p> <p>(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.</p> <p>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 reference providing AI may not be able to benefit from the waiver and be released from contractual liabilities.</p> <p>One respondent also suggested that "safe harbour provisions" be set up alongside the proposed MRC Scheme to safeguard the legal interests of AIs.</p>	
42.	<p><b>Modification of MRC template</b></p> <p>Some respondents asked if the format of the MRC template can be modified.</p>	<p>The IWG may refine the format of the MRC template to better suit the needs of the industry, while it is expected that the entire banking industry would use the same MRC template for responding to MRC requests.</p>

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43.	<p><b>Right to request MRC copy</b> 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.</p>	<p>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.</p>
44.	<p><b>Multiple roles served in the reference providing AI</b> 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 necessary.</p>	<p>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.</p>
45.	<p><b>Suggested amendments to Question 1</b> One respondent suggested that for consistency, the latter part of Question 1 (where description 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.</p>	<p>The proposed amendments are broadly acceptable. Further refinements on the template can be discussed in the proposed IWG.</p>
46.	<p><b>Consolidation with foreign reference check standard forms</b></p>	<p>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.</p>

#	Comments / questions from respondents	HKMA's response
	One respondent suggested consolidating all information to be acquired or supplied under different MRC regimes into a single template.	
<b>Q7. Do you have any comments on the proposed duration of MRC information coverage, i.e. 10 years of employment records?</b> <b>Q8. Do you foresee any difficulties for AIs to maintain 10 years of employment records of their employees for MRC purpose?</b>		
47.	<b>Duration of MRC information</b> Respondents generally considered that for MRC information to cover 10 years of employment records to be 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.	While the PDPO provides that employment related records could be retained for more than 7 years if there is a subsisting reason, most of the respondents considered the proposed retention period of 10 years burdensome on AIs in terms of storage and retention requirements and operational concerns, and it may also deny employees a rehabilitation opportunity. We therefore agree to shorten the duration of MRC information from 10 years to 7 years for Phase 1. The duration of MRC information for Phase 2 could be further determined during the consultation for Phase 2 of the Scheme.
<b>Q9. Do you have any comments on the requirements to obtain consent from the prospective employee?</b>		
48.	<b>Refusal to provide consent</b> 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.
49.	<b>Industry consent template for MRC</b> Most of the respondents considered that having a standard written consent template for MRC would be beneficial so that a consistent approach can be adopted across the industry.	It is proposed that that the proposed IWG can take the lead to consider and develop a standard consent template.

#	Comments / questions from respondents	HKMA's response
50.	<p><b>Withdrawal of consent</b> One respondent proposed that procedures should be incorporated to provide for situations where a prospective employee subsequently withdraws their consent.</p>	<p>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.</p>
51.	<p><b>Making MRC requests to current employers</b> Some respondents considered that recruiting AIs may face practical difficulties and concerns related to obtaining consent from prospective employee to request MRC information from their current employer as it will expose his/her intention to change jobs, 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.</p>	<p>A possible way to address the concern is for the recruiting AI to consult with the prospective employee as to when the MRC request should be sent to the various reference providing AIs. 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:</p> <p>(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;</p> <p>(b) Step 2: Obtain the candidate's consent and request MRC information from his/her former employers;</p> <p>(c) Step 3: After the candidate has tendered his/her resignation, or after the candidate's last day with his/her current employer, a MRC request can be sent to the current employer; and</p> <p>(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.</p> <p>The operational details can be discussed and refined by the proposed IWG.</p>
52.	<p><b>Finalisation of employment decision</b> Some respondents asked whether the recruiting AI has to complete all the MRC processes before making an employment decision, 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 their employment history. Some sought guidance on the types of</p>	<p>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 of not having been involved in any misconduct incident or subject to any material disciplinary actions etc., while pending the completion of the MRC processes.</p>



#	Comments / questions from respondents	HKMA's response
	<p>considerations and factors which the HKMA would deem sufficient to justify a recruitment decision.</p>	<p>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, 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.</p>
<b>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?</b>		
53.	<p><b>Completeness of employment records</b> 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.</p>	<p>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.</p>
54.	<p><b>Merger and acquisition / dissolution / revocation / restructuring of AI</b> 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.</p>	<p>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.</p> <p>However, AIs are reminded under some circumstances regulatory approval would 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.</p>
<b>Q11. Do you foresee any practical issues in providing an opportunity to be heard to the prospective employee?</b>		
55.	<p><b>Opportunity to be heard</b></p>	<p>As stated in paragraph 49 of the Consultation Paper, the information provided under the MRC Scheme should be, to the best knowledge of the reference providing AIs, true, fair,</p>

#	Comments / questions from respondents	HKMA's response
	<p>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; quality of on-going investigation being compromised; and potential breach of secrecy obligations, etc.</p> <p>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.</p>	<p>complete, accurate and capable of substantiation. As a matter of fairness and taking into consideration relevant PDPO requirements on in relation to rights to request correction of personal data, we maintain the view that the recruiting AI should provide the prospective employee with an opportunity to be heard in the event that there is negative information received from reference providing AIs. See #43 on right to request MRC copy.</p>
56.	<p><b>Duty to investigate</b></p> <p>Some respondents considered that provision of opportunity to 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.</p>	<p>The provision of opportunity to be heard is a due process aiming to ensure fairness and safeguard the interest of the prospective 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. As regards open investigations, as mentioned in #12 above, if it is considered appropriate to include such information in the MRC Information Template, the reference providing AI is expected to update the recruiting AI if the investigation subsequently reveals anything that may cause substantive changes to the MRC information provided earlier.</p>
<b>Q12. Do you have any other comments in relation to the obligations of recruiting AIs under the MRC Scheme?</b>		
57.	<p><b>Information sharing within AI's group</b></p> <p>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.</p>	<p>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.</p>
58.	<p><b>Extent of follow-up actions by recruiting AI</b></p>	<p>Recruiting AIs are deemed to have discharged their duties if they have reasonably followed up with the reference providing AI but are refused additional information.</p>

#	Comments / questions from respondents	HKMA's response
	<p>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. propriety business and employees information, weaknesses in internal operations, etc.).</p>	<p>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 providing such information may reveal confidential and proprietary information about their business and employees (other 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 #28.</p>
59.	<p><b>Retention period of MRC information</b>  One respondent sought clarification on the retention period required of MRC information obtained from reference recruiting AIs.</p>	<p>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.</p>
60.	<p><b>Outsourcing</b>  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.</p>	<p>AIs may outsource their MRC process to external services providers as long as the AIs are responsible for ensuring compliance with the relevant regulatory requirements applicable to outsourcing.</p>
61.	<p><b>Delay in provision of feedback from the reference providing AI</b>  One respondent sought clarification on situations where a reference providing AI fails to provide a response on a MRC request after the specified period, and suggested to establish a reporting channel in the event a reference providing AI fails to reply within the specified period.</p>	<p>As mentioned in paragraphs 50 and 51 of the Consultation Paper, reference providing AIs should normally respond within the specified period but if they encounter difficulties they should at least provide an interim reply to the recruiting AI on the reason why it 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 they still cannot obtain MRC information after waiting for a response from the reference providing AIs for 20 working days or a longer period that is mutually agreed by both parties.</p> <p>In cases where AIs observe repeated and substantial failure of a particular AI to respond to MRC requests, such a matter can be raised to the proposed IWG for discussion and any unresolved matter can be brought to the attention of the HKMA through the IWG.</p>

#	Comments / questions from respondents	HKMA's response
62.	<p><b>Contact points at AIs for the MRC Scheme</b> Some respondents asked about ways to ensure timeliness in receiving MRC information.</p>	<p>We expect the industry 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.</p>
63.	<p><b>Negative MRC information received after the employee is onboard</b> 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.</p>	<p>It would be up to the recruiting AI to decide how they would make use of such information to evaluate the employee so hired, taking into account the substance and seriousness and updated information, and whether further actions would be warranted.</p>
64.	<p><b>Data breach</b> 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.</p>	<p>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.</p>
<p><b>Q13. Do you have any comments on the requirement for the reference providing AIs to respond to MRC requests within 10 working days?</b></p>		
65.	<p><b>Length of time to respond to MRC request</b> Most of the respondents considered that 10 working days would be inadequate for a reference providing AI to respond to the MRC request, as some AIs may have limited number of staff handling HR records and some records may not be handled centrally by the HR department, which may in turn require inputs from various departments within the AI. Some</p>	<p>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. Noting the industry's concerns, we have revised the response time to 20 working days, counting from the day the MRC request is made by the recruiting AI. To facilitate timely receipt of MRC requests, the HKMA encourages the industry to set up a list of AIs' contact points and contact information for the purpose of the MRC Scheme, and for recruiting AIs to submit MRC requests to reference providing AIs in electronic forms where possible. The</p>

#	Comments / questions from respondents	HKMA's response
	respondents considered imposing the MRC Scheme would cause a delay in the hiring processes.	20 working day response period applies to initial MRC requests only, and AIs are advised to work out the time for handling follow-up requests.
<b>Q14. Do you have any comments on the requirements for reference providing AIs to provide updated MRC information to recruiting AI?</b>		
66.	<p><b>Corporation in the process of applying banking licence</b> 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.</p>	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 their in-scope staff.
67.	<p><b>Providing update on MRC information</b> 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.</p>	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 would 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 disclosed 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.
68.	<p><b>Scenarios which warrant an MRC update</b> 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 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</p>	An MRC update should be provided by reference providing AIs when it can 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 seriousness of the incident concerned, as well as the role of the former employee in the incident, etc.

#	Comments / questions from respondents	HKMA's response
	clarification on whether it is necessary to provide an update if the individual is not the subject of an investigation.	
69.	<p><b>Liability on failure to update</b></p> <p>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.</p>	<p>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.</p>
<b>Q15. Do you have any other comments in relation to the obligations of reference providing AIs under the MRC Scheme?</b>		
70.	<p><b>Work performance</b></p> <p>One respondent sought clarification on whether it is required to disclose an individual's work performance under the MRC Scheme.</p>	<p>The MRC Scheme focuses on the conduct aspect of prospective staff. Work performance that are 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.</p>
<b>Q16. Do you have any comments or foresee any practical issues in fulfilling the operational requirements?</b>		
71.	<p><b>Secured email</b></p> <p>One respondent asked if some technological alignment may be needed between reference providing AIs and recruiting AIs if they need to exchange secure emails.</p>	<p>AIs should use secure email for exchanging MRC information (e.g. ICLNet secure email).</p> <p>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.</p>
<b>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?</b>		
72.	<p><b>Challenges in adopting API</b></p> <p>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</p>	<p>In view of the significant technical challenges and resources constraints faced by AIs, exploration of the feasibility of internal 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. We would leave it to the IWG to consider the matter.</p>

#	Comments / questions from respondents	HKMA's response
	<p>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.</p>	
<p><b>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?</b></p>		
73.	<p><b>Retention of employees' personal data</b>  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.</p>	<p>The PCPD has provided recommendations on these areas which are stipulated below -</p> <p>All AIs should implement a data retention policy for MRC data.</p> <p>Regarding the personal data of an unsuccessful job applicant, generally speaking, all recruiting AIs should not retain the same for a 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.</p> <p>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.</p>
74.	<p><b>Monitoring AIs' compliance with MRC Scheme</b>  Respondents sought clarification on how the HKMA will monitor AIs' compliance with the MRC Scheme.</p>	<p>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 Scheme. In the meantime, the proposed IWG may consider establishing channels for AIs to discuss challenges and exchange views on the implementation as well as for the working group to monitor compliance of the Scheme. If there is any matter that warrants further escalation, it could be made to the HKMA through the IWG.</p>

#	Comments / questions from respondents	HKMA's response
75.	<p><b>Supervisory approach</b></p> <p>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.</p>	<p>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.</p>
76.	<p><b>Role of HKMA</b></p> <p>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.</p>	<p>The HKMA would explore with HKAB for HKAB to set up an industry working group (i.e. the IWG) to formulate, within 6 months of the issuance of the consultation conclusion, operational details of the MRC Scheme in accordance with the consultation conclusion 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 will provide guidance on the formulation and the establishment of the MRC Scheme, and monitor and review the ongoing effectiveness of the MRC Scheme.</p>
<b>Q19. Do you have any comments on confining the mandatory reference checking within the Hong Kong banking industry at the beginning?</b>		
77.	<p><b>Implementation of MRC within the Hong Kong banking industry</b></p> <p>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 retail banks before extending it to all AIs to better address any operational hurdles before the Scheme is extended to the entire banking industry.</p>	<p>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 Scheme to be further confined to only a few major retail banks at the beginning as this 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 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.</p>
<b>Q20. Do you have any other comments on the proposed MRC Scheme and other suggestions that can help to tackle RBA phenomenon?</b>		
78.	<p><b>PCPD comments</b></p> <p>Some respondents considered the proposed MRC Scheme may potentially have implications for individuals' privacy, and as</p>	<p>The Consultation Paper has been shared with PCPD to solicit their comments on the proposal and the PCPD has provided valuable recommendations to help refine the</p>



#	Comments / questions from respondents	HKMA's response
	such it may be appropriate for the HKMA to consult with the Office of the Privacy Commissioner for Personal Data.	requirements. Details of the comments can be found at <b>Comments of the PCPD in response to Consultation on Implementation of MRC Scheme: A Summary</b>
79.	<p><b>Request for MRC information for prospective employees not yet in scope</b></p> <p>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.</p>	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.
80.	<p><b>Use of CR</b></p> <p>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.</p>	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. It is suggested that the IWG can also explore the setting up of the CR as an industry initiative with HKMA's support.
81.	<p><b>CR links</b></p> <p>One respondent suggested the HKMA could also work with overseas regulators, such as the CBIRC, and exchange data on RBAs, should the MRC Scheme be extended to cover overseas entities in the future.</p>	The proposal can be further explored if a CR is to be established.
82.	<p><b>MRC information in reference letter</b></p> <p>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,</p>	While including MRC information in reference letters for leavers may help reduce the number of MRC requests received by reference providing AIs, caution has to be taken in the treatment of employees with negative comment in reference letters. We suggest to adopt the proposed MRC approach first and review the Phase 1 implementation to further consider ways to fine-tune the MRC Scheme.

#	Comments / questions from respondents	HKMA's response
	hence reducing the number of MRC requests reference providing AIs may receive.	
83.	<p><b>Publicity campaign</b></p> <p>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.</p>	<p>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 publicity and education 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.</p>