

**Information Note for  
the LegCo Panel on Financial Affairs**

**Comparative Study on Banking Consumer Protection and Competition  
Arrangements in the UK, Australia and Hong Kong: An Introductory Note**

**Introduction**

This note summarises the findings of a comparative study recently conducted by the Hong Kong Monetary Authority (HKMA) on how the banking consumer protection and competition arrangements in Hong Kong compare with those in two other jurisdictions, the UK and Australia. It also highlights a number of issues that, in the view of the HKMA, need to be addressed in considering what improvements can be made to Hong Kong's arrangements.

**The Study**

2           The purpose behind the Study is to bring together factual information on what is being done elsewhere on banking consumer protection and competition so as to facilitate consideration of whether the current arrangements in Hong Kong remain appropriate. The UK and Australia were chosen because these two jurisdictions provide clear examples of two different approaches and institutional frameworks. The Study also identifies certain areas in which the arrangements in Hong Kong do not go as far as, or are less formalised than, those in the other jurisdictions.

**Comparison between the UK, Australia and Hong Kong: highlights**

3           A key difference between Hong Kong and the other two comparison jurisdictions is that the regulators in both the UK and Australia have been given an explicit mandate in relation to the protection of consumers of financial and banking

services. In the case of Hong Kong, the HKMA only has a general duty to "provide a measure of protection to depositors" under the Banking Ordinance. There is no explicit mandate with respect to consumer protection.

4           Among the major differences between the Hong Kong and overseas regime, two particular areas are highlighted: first, the setting, monitoring, and enforcement of standards of business practice; and, secondly, the investigation, resolution, and arbitration of customer complaints.

5           With regard to standards of business practice, all three jurisdictions have a Code of Banking Practice, and in all three jurisdictions this Code is non-statutory. However, there are differences in who enforces the Code and how it is enforced, and what sanctions are available against institutions that breach it. In both the UK and Australia, there is formal monitoring of compliance by a specialist agency. In Hong Kong, although monitoring falls to the HKMA, this is not its statutory responsibility and it does not have statutory powers specifically related to the Code.

6           For the resolution of customer complaints, both the UK and Australia have a formalised Ombudsman scheme, initially set up on a self-regulatory basis, which has powers to arbitrate in disputes. Hong Kong has no such scheme, although the HKMA plays a role in relation to customer complaints in terms of trying to ensure that they are dealt with properly by the banks involved. The HKMA, however, cannot arbitrate on complaints, nor can it make orders for compensation.

7           These two examples highlight how the consumer protection arrangements in Hong Kong do not go as far as, or are less formalised than, those in the other jurisdictions. In part this may be due to a difference in philosophy - i.e. Hong Kong's more free-market, pro-competition approach. But as the Hong Kong market is becoming more sophisticated and more competitive, and as consumer issues are coming more to the fore, it is timely to consider whether the current arrangements in Hong Kong remain appropriate.

8           If it is considered that Hong Kong should move further down the path followed by the other jurisdictions this will raise a number of issues. The first question is which are the areas in which Hong Kong's arrangements should be enhanced, and how should this be achieved, including the extent to which legislation would be required. The second is to decide who should be responsible for these matters. There are three broad options for this. The first would be some form of self-regulation by the banking industry. The second would be some form of consumer protection agency. The third would be to assign this responsibility to the HKMA. All of this would have to be the subject of detailed consideration by the Government, the Legislative Council, and other interested parties.

### **HKMA involvement in consumer protection?**

9           At present the HKMA does not have an explicit mandate in the area of consumer protection, but over time it has increasingly participated in this area. For example, the HKMA is heavily involved in the Code of Banking Practice and also in dealing with customer complaints. It does this willingly and considers it as an important part of its role, and would not be averse to becoming more involved in this area if this were asked of it. While there may be potential conflicts associated with taking on both prudential regulation and consumer protection roles, these can be managed by having clear Chinese walls between the two functions. Moreover, there are also synergies between the two roles, since both require a good knowledge of, and close contacts with, the banking industry. There is also the point that it may also be more efficient and cost-effective for the HKMA to take on this role than to establish a separate entity.

10           The HKMA remains open-minded on this. It should, however, be made clear that greater involvement of the HKMA in these areas would require a clear mandate, statutory powers, and additional resources. While the existing powers under the Banking Ordinance are not ideally suited to micro issues of consumer protection,

the HKMA has been able to find ways to enhance its involvement in areas such as the Code of Banking Practice and customer complaints effective. Nevertheless, powers of the HKMA would have to be reconsidered if its mandate were to be widened.

11 It is important to point out from the outset that a greater emphasis on consumer protection issues would not mean that there would be intervention in banks' commercial decisions in such areas as the setting of fees and charges. It is clear from the Study that, while the scope of consumer protection is wider in other jurisdictions, there are certain areas, even in these jurisdictions, such as the pricing of services and lending decisions, which do not come within the compass of consumer protection.

### **The next step**

12 With regard to the future work programme, HKMA's priority is to work together with the Hong Kong Association of Banks to finalise the current review of the Code of Banking Practice. Once this has been completed, the HKMA intends to move on to consider the following specific issues:

- (a) Should the HKMA be given an explicit statutory responsibility for consumer protection? If so, how should this responsibility be expressed and how should it be discharged?
- (b) How, and by whom, should the Code of Banking Practice be monitored and enforced? Is there a case for giving the Code some form of statutory backing?
- (c) What sanctions should be made available against institutions that breach the Code?
- (d) Should the HKMA set specific standards for banks' internal complaint handling procedures?

- (e) Is there a need for an external mechanism, such as an Ombudsman scheme, for resolving disputes between banks and their customers? If so, what arrangements for dispute resolution should be put in place?

13 This is certainly not an exhaustive agenda for addressing consumer issues. Nor does it address the question of how competition within the banking industry should be promoted and by whom. However, to find appropriate answers to these questions would go a long way to putting in place an effective framework for consumer protection in the banking industry. The HKMA will be taking this work forward in consultation with other bodies such as the industry Associations and the Consumer Council. It will report back to the Legislative Council Panel on Financial Affairs on the results of this work as soon as possible.

Hong Kong Monetary Authority

27 April 2001

**Comparative Study on  
Banking Consumer Protection and  
Competition Arrangements  
in the UK, Australia and Hong Kong –**

***Role of the Financial Regulator  
and  
Self-Regulation of Market Conduct***

***Hong Kong Monetary Authority***

***April 2001***

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## **Executive Summary**

### ***Background***

1. There are increasing calls for the Hong Kong Monetary Authority (HKMA) to address the issue of protection of bank customers in view of public concern about such issues as the impact on customers of increases in banks' fees and charges. In response, the HKMA has undertaken a comparative study of banking consumer protection and competition arrangements in the UK, Australia and Hong Kong, as a first step to review whether the HKMA should play a more explicit role in consumer protection. The objective of the study is to compare and contrast the arrangements for bank customer protection in Hong Kong and overseas regimes. This paper reports on the results of the comparative study. Resultant policy implications and recommendations for change will be considered separately.

### ***Major differences between Hong Kong and comparison countries***

#### *General Framework for Consumer Protection / Competition*

2. There are significant differences in the consumer protection and competition regimes between the comparison countries and Hong Kong.
3. Both the UK and Australia have put in place a formal regulatory framework for consumer protection to safeguard consumers' interests. Similarly, both have a general competition law, the aim of which is to improve economic efficiency.
4. In the UK, the Office of Fair Trading (OFT) is responsible for enforcing legislation in relation to consumer protection and promoting competition in general. Among other functions, it has statutory duties under the Fair Trading Act to encourage traders to provide high standards of customer service and to ensure that complaints are tackled quickly and fairly. The OFT and the Competition Commission are the two major competition authorities responsible

for prohibiting anti-competitive practices as well as practices arising from abuse of a dominant position.

5. In Australia, the Australian Competition and Consumer Commission (ACCC) is the national agency responsible for protecting consumer interests and safeguarding competition. Under the Trade Practices Act 1974 and the Prices Surveillance Act 1983, the ACCC seeks to promote competition and efficiency in markets, fosters adherence to fair trading, promotes competitive pricing and restrains price rises in markets where competition is less than effective. Within the financial sector, the Australian Securities and Investment Commission (ASIC) is the agency which has been charged with the responsibility for consumer protection.
  
6. The Government is committed to promoting competition to enhance economic efficiency and free trade, thereby benefiting consumers. It sees competition as a means to achieving the said objective, not as an end in itself. The Government believes that competition is best nurtured and sustained by allowing the free play of market forces and keeping intervention to the minimum. It will not interfere with the market unless market imperfections or distortions limit market accessibility or market contestability, and impair economic efficiency or free trade, to the detriment of the overall interest of Hong Kong. The competition policy in Hong Kong is based on a broad policy framework as set out in the “Statement on Competition Policy”, which may be supplemented by a range of sector-specific measures, where necessary, ranging from licensing conditions, contractual provisions, codes of practice, administrative means, public censure and anti-competition provisions in specific legislation. The Government sees no need for an all-embracing competition law, which has its own inadequacies, and may run the risk of over-regulating, creating uncertainties in the business environment, and compromising the free and open trade principles in Hong Kong.
  
7. General consumer protection is provided by various ordinances in areas such as trading standards and product safety. Where more specific consumer protection measures are called for in particular areas, tailor-made provisions are contained

in sector-specific law to ensure that the required protection is in place for consumers in the respective sectors. The Consumer Council in Hong Kong plays a pro-active role in handling complaints, mediating in consumer disputes and conducting tests and surveys on products and services. Although it does not have the role of a regulator with accompanying enforcement powers, the Consumer Council has a good track record of performing the above functions effectively, including achieving a high success rate in its mediation efforts.

### *Financial Regulation and Banking Consumer Protection / Competition*

8. The responsibility for protecting consumers of financial (including banking) services is designated to the prudential regulator (the Financial Services Authority) in the UK and to an independent statutory agency (Australian Securities and Investments Commission) in Australia. In contrast, we do not have a designated authority in Hong Kong with an explicit mandate to protect consumers of *banking services*.
9. The UK has established the Financial Services Authority (FSA) as a single regulator for the financial services industry, with an explicit mandate on consumer protection. Two of FSA's regulatory objectives are consumer-related, namely to promote understanding of the financial system and to secure an appropriate degree of protection for consumers. Among other things, the FSA is required under the law to establish single ombudsman and compensation schemes to provide protection for consumers. It also provides other services to promote consumer education and financial literacy. With regard to competition considerations, the FSA is subject to competition scrutiny of the OFT and the Competition Authority in the process of formulating its rules.
10. In the case of Australia, a functional model of financial supervision is adopted with different agencies set up to look after different aspects of financial markets. The Australian Prudential Regulation Authority (APRA) is the agency for prudential regulation, while the ASIC and the ACCC deal respectively with consumer protection and competition in the financial system. Although the

primary concern of APRA is financial safety, it is required to *"balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality."* Among its other functions, the ASIC is particularly responsible for monitoring compliance with the Australian Code of Banking Practice, checking customer complaints systems, approving dispute resolution schemes such as the Ombudsman Scheme, as well as promoting consumer education. As part of its economy-wide remit, the ACCC is also the agency responsible for ensuring competition in the financial system.

11. In Hong Kong, financial supervisory duties are divided among different regulators according to the financial markets being regulated. The principal regulators are the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Office of the Commissioner of Insurance (OCI). The HKMA has a general function *"to provide a measure of protection to depositors"* and also a duty *"to promote and encourage proper standards of conduct"* of authorised institutions. However, such functions must be viewed in light of the principal function of the HKMA which is *"to promote the general stability and effective working of the banking system"*. As this principal function basically relates to macro issues concerning the health of the banking system as a whole, as a consequence the HKMA's formal powers under the Banking Ordinance are not well suited to dealing with consumer matters. However, the HKMA has other means – e.g. encouraging adherence to the Code of Banking Practice, moral suasion, handling of customer complaints, etc. – which can be effective in the context of consumer affairs.

#### *Self-regulation by way of Codes of Banking Practice*

12. In addition to formal regulation by the regulators, industry self-regulation plays an important role in consumer protection and education by setting minimum standards for market conduct. All three countries have formulated voluntary Codes of Banking Practice issued or sponsored by the industry associations. Though the exact contents may vary, the scope of the Codes generally covers account operation, disclosure requirements, principles of conduct and dispute

resolution. Among other differences, the form and effectiveness of compliance monitoring vary. Both the UK and Australian Codes require subscribers to put in place internal procedures for handling customer complaints which should meet certain standards. In addition, members should also belong to an external dispute resolution mechanism such as an Ombudsman scheme for customers' further recourse.

13. Compliance with the UK Banking Code is monitored by the Banking Code Standards Board (BCSB), an organisation funded by the industry with an independent board. The Board monitors compliance through self-assessment as well as third-party checking. Sanctions include disclosure of breaches, issue of a warning or reprimand, suspension or cancellation of a bank's registration as a subscriber to the Code, as well as public censure. Nevertheless, the powers available to the BCSB are considered limited, and it has plans to introduce new rules on disciplinary procedures and penalties once these have been agreed with the British Bankers' Association. The Cruickshank Report on "Competition in UK Banking" has raised concerns about whether the current self regulatory approach of the Banking Code is delivering real benefits to consumers. In response, the Government has undertaken a review to see what can be done to improve this, especially the neutrality and impartiality of the rule-making and enforcement process.
14. The Australian Code of Banking Practice is currently under review by an independent consultant. Unlike the UK Code, monitoring of compliance is done by a statutory agency (the ASIC). The ASIC publishes compliance results and complaint statistics each year. The monitoring process is, however, dependent solely on self-assessment carried out by banks with no external oversight. In addition, the ASIC generally cannot take enforcement action if the code is breached unless a breach of law is also involved. These constraints have undermined the effectiveness of the monitoring role of the ASIC and attracted public criticism. The ASIC has already indicated that it plans to review the monitoring process to assess whether the self-assessment process could be made

more effective and notes that it should be complemented by some form of external monitoring.

15. In Hong Kong, the industry bodies do not play a role in monitoring or enforcing compliance with the Code of Banking Practice. As the banking regulator, the HKMA played a pro-active role in bringing the Code of Banking Practice into being and is also involved in monitoring compliance with the Code, reflecting its concern for consumer protection. The HKMA monitors compliance by means of a self-assessment process as well as by means of on-site examinations and conducting surveys. As explained earlier, most of the HKMA's statutory powers are intended to be exercised in relation to macro issues concerning the general stability of the banking system and not micro issues such as consumer disputes. Therefore the formal role of the HKMA in consumer protection is not as clear cut as that of agencies in the comparison countries. Moreover, the formal powers available under the Banking Ordinance are not well suited to dealing with breaches of the Code, although through other means such as moral suasion, promotion of the Code of Banking Practice, and the handling of customer complaints, the HKMA has been able to play an increasingly greater role in consumer issues. With regard to dispute resolution procedures, however, the HKMA has not set standards for the internal procedures of banks. Also, there is no requirement for banks to provide a free alternative dispute resolution mechanism to customers (i.e. there is no Banking Ombudsman).

#### *Dispute Resolution and Ombudsman Schemes*

16. Both comparison countries have a more elaborate framework for resolving general customer complaints (not necessarily linked to compliance with the Code). Banking Ombudsman schemes are available in both the UK and Australia to provide an informal means to resolve consumer disputes. In addition, there are prescribed standards or rules (being proposed in the case of Australia) in respect of the internal procedures of banks for handling customer complaints. The regulators in the UK and Australia do not generally have to deal with

banking customer complaints as the HKMA does, in light of the absence of an external dispute resolution mechanism in Hong Kong.

17. The FSA is required to set up a new single Financial Ombudsman Service (FOS) under the Financial Services and Markets Act. In addition, the FSA is responsible for making the complaints handling rules for regulated firms including banks. The former UK Office of the Banking Ombudsman, first set up by the industry voluntarily, will be incorporated under the new regime of the FOS. All authorised banks are covered by the FOS on a compulsory basis. There are also suggestions from the Cruickshank Report for the FOS to draw up consumer guidelines but the Government states that the Ombudsman is primarily a dispute resolver, rather than a standard setter or regulator. Nevertheless, the Government is conducting a review to consider, among other things, what role there is for the Ombudsman to play in influencing the industry standards.
18. In Australia, banks will be required under the proposed Financial Services Reform (FSR) Bill to provide their customers with access to appropriate internal and external complaints and dispute resolution processes. The internal and external processes will be subject to nationally recognised standards and the approval of the ASIC respectively. Failure to provide the appropriate dispute resolution procedures will be a breach of a licence requirement.
19. The Hong Kong Code of Banking Practice requires banks to establish procedures for handling customer complaints and contains a few recommended practices in relation to such procedures. However, there is no Ombudsman scheme or recognised alternative dispute resolution service through which customers can secure an independent and professional resolution of disputes with banks. Banking customers can complain to the HKMA in the event of an unresolved dispute with a bank. The HKMA will then contact the bank involved to make sure that the complaint is fully investigated by the bank. The HKMA, however, does not arbitrate in the dispute or award compensation.

## *Accessibility to Basic Banking Services*

20. There are no formal requirements upon banks to provide basic banking services to the low-income group in the UK, Australia and Hong Kong. There is also no product regulation of banking services or formal restriction on banks' fees and charges. However, government bodies and regulators often play a catalytic role in encouraging the market to cater to the banking needs of the disadvantaged groups of the community, and may consider taking the necessary steps should the market fail to respond to such needs.
21. The Government in the UK is very active in encouraging banks to meet the objective of promoting the provision of basic banking services to vulnerable customers. It is also considering alternative services and delivery channels to help promote financial inclusion. The banking industry has also defined the features of a basic bank account in the Banking Code and most high street retail banks already provide such accounts. Although it does not believe that formal regulation is called for, the Government has recently proposed for consultation a list of CAT (standing for **C**harges, **A**ccess, and **T**erms) standards as a benchmark for basic bank accounts. By setting a benchmark in terms of no one-off charges for everyday transactions, the CAT standards will effectively set a price restriction on such accounts in the market.
22. According to the Australian Bankers' Association (ABA), low-cost accounts already exist for low-income groups and vulnerable customers in Australia, without the Government having to become involved in this area. Nonetheless, the ABA has recently announced the intention to incorporate basic bank account features in the Code of Banking Practice under its current review. Moreover, the country's main opposition party has suggested that it would consider a "Social Charter" for banks if it wins power.
23. The problem of financial exclusion does not appear to be a problem in Hong Kong at present as there are a number of banks willing to serve small depositors. The Government has recommended banks to give sympathetic consideration to

the elderly and vulnerable/disadvantaged groups when adjusting fees and charges, e.g. by granting exemptions to such people. The Government will continue to monitor developments closely, and consider taking appropriate measures if necessary to ensure the provision of basic banking services at a reasonable cost to disadvantaged customers.

24. Table 1 gives a high-level comparison of the consumer protection arrangements among the three countries under study. This serves to highlight the major differences in bank customer protection between Hong Kong and the other two jurisdictions.

**Table 1: Consumer Protection Arrangements in the UK, Australia and HK**

	UK	Australia	Hong Kong
<b>Regulatory Framework</b>			
General legislation on consumer protection	✓ <sup>1</sup>	✓ <sup>2</sup>	✓ <sup>3</sup>
General legislation on competition	✓ <sup>4</sup>	✓ <sup>5</sup>	✗ <sup>6</sup>
Regulator with explicit mandate to protect <i>banking</i> consumers	✓ <sup>7</sup>	✓ <sup>8</sup>	✗ <sup>9 10</sup>
Prudential regulator required under statute to pay regard to competition or contestability considerations	✓	✓	✗ <sup>11</sup>
Power of regulator to regulate market conduct	✓ <sup>12</sup>	✓ <sup>13</sup>	✗ <sup>14</sup>
<b>Role of the Industry Associations</b>			
Issuers / sponsors of industry code of practice	✓	✓	✓
Role in monitoring compliance with the industry code	✓ <sup>15</sup>	✗	✗
Role in setting up industry Ombudsman schemes	✓ <sup>16</sup>	✓ <sup>17</sup>	✗

<sup>1</sup> Fair Trading Act administered by the Office of Fair Trading (OFT).

<sup>2</sup> Trade Practices Act and Prices Surveillance Act administered by the Australian Competition and Consumer Commission (ACCC).

<sup>3</sup> Instead of achieving this through a single piece of legislation, general consumer protection in terms of fair trading is provided by a number of ordinances, including the Unconscionable Contracts, Supply of Services (Implied Terms), and Control of Exemption Clauses Ordinances.

<sup>4</sup> Competition Act administered by the Competition Commission and OFT.

<sup>5</sup> See *Footnote 2*.

<sup>6</sup> There is no general competition law. The Government adopts a sector-specific approach to promoting competition as promulgated in the "Policy Statement on Competition".

<sup>7</sup> The regulatory objectives of the Financial Services Authority (FSA) include consumer protection and promoting public understanding of the financial system.

<sup>8</sup> ASIC's regulatory aims include the requirement to "*promote the confident and informed participation of investors and consumers in the financial system.*" The APRA is also required to "*balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality.*"

<sup>9</sup> A "tick with a cross" means that the regime does not have arrangements that are as formalised as in the comparison countries in a particular aspect. However, there are some elements of the relevant feature in an alternative or less formal basis.

<sup>10</sup> The HKMA has a general duty to "*provide a measure of protection to depositors*" under the Banking Ordinance (BO), but there is no explicit mandate with respect to consumer protection.

<sup>11</sup> Whilst there is no statutory requirement in this respect, bureaux and departments are required to give due regard to the competition angle in formulating policy and reviewing existing practices to ensure compliance with the competition policy.

<sup>12</sup> FSA's conduct of business rules apply principally to designated investment business. They have only limited application to banking.

<sup>13</sup> ASIC sets standards about what deposit taking institutions tell their customers; and monitors their sales practices and compliance with codes of practices.

<sup>14</sup> One of the functions of the HKMA is to "*promote and encourage proper standards of conduct and sound and prudent business practices*" of AIs, but they have to be viewed in the light of its principal function which is related to macro issues concerning the general stability and effective working of the banking system as a whole. The power of the HKMA in relation to protecting consumers is therefore limited.

<sup>15</sup> The Banking Code Standards Board (BCSB) was set up by the British Bankers' Association to independently monitor compliance with the Code.

<sup>16</sup> The Banking Ombudsman Scheme, first set up in 1986, will be incorporated into the statutory Financial Ombudsman Service (FOS) to be set up by the FSA.

<sup>17</sup> The Australian Banking Industry Ombudsman Scheme is an industry based, self-regulatory scheme set up in 1990.

	UK	Australia	Hong Kong
<b>Code of Banking Practice</b>			
Non-statutory Code of Banking Practice (COBP)	✓	✓	✓
Monitoring of COBP	✓ <sup>18</sup>	✓ <sup>19</sup>	✓ <sup>20</sup>
Sanctions against non-compliance with COBP	✓ <sup>21</sup>	✗ <sup>22</sup>	✗ <sup>23</sup>
<b>Dispute Resolution for General Complaints</b>			
Banks' internal dispute resolution procedures subject to statutory rules or recognised standards	✓ <sup>24</sup>	✓ <sup>25</sup>	✗
External dispute resolution schemes subject to approval	✓ <sup>26</sup>	✓ <sup>27</sup>	✗
Availability of ombudsman scheme to resolve bank customer disputes	✓ <sup>28</sup>	✓ <sup>29</sup>	✗
<b>Access to Basic Banking Service</b>			
Product regulation of banking services	✗	✗	✗
Regulation of banks' fees and charges	✗	✗	✗
Description of basic bank account (BBA) in COBP	✓ <sup>30</sup>	✓ <sup>31</sup>	✗
Official benchmarks for BBA	✓ <sup>32</sup>	✗	✗
Banking service via postal office or rural transaction centres	✓	✓	✗

<sup>18</sup> Monitoring by way of industry self-regulation by the Banking Code Standards Board (BCSB).

<sup>19</sup> Monitoring by ASIC basically through self-assessment carried out by banks.

<sup>20</sup> Monitoring by HKMA as part of on-going supervision of AIs, supplemented by internal audit assessment.

<sup>21</sup> Sanctions include "name and shame" and ultimate expulsion of membership by BCSB.

<sup>22</sup> ASIC generally cannot take enforcement actions unless a breach of law is also involved.

<sup>23</sup> The exercise of powers under the BO by the HKMA generally applies to matters affecting macro stability of the system and may not be proportionate to the more micro issues of bank-customer relationship or conduct.

<sup>24</sup> Complaints Handling Rules drawn up by FSA under the Financial Services and Markets Act (FSMA), in conjunction with the Financial Ombudsman Service (FOS).

<sup>25</sup> Australian Standard on Complaints Handling developed by Standards Australia, a non-Government body endorsed and partially funded by the Commonwealth Government.

<sup>26</sup> FSA is required under FSMA to establish a single, compulsory ombudsman scheme, i.e. the FOS.

<sup>27</sup> External resolution schemes must meet regulatory guidelines set out by ASIC.

<sup>28</sup> All regulated firms (including banks) will be covered by the FOS on a compulsory basis when the FSMA comes into operation later on this year. In the meantime, they are covered by the Banking Ombudsman Scheme and other Ombudsman schemes for other financial services.

<sup>29</sup> Australian Banking Industry Ombudsman Scheme is an industry based, self-regulatory scheme.

<sup>30</sup> Features: income can be paid by employers directly into the account; benefits can be paid by the Government directly into the account; cheques and cash can be paid into the account; bills can be paid by direct debit, by transferring money to another account or by a payment to a linked account; cash can be withdrawn at cash machines; there is no overdraft; and the last penny in the account can be withdrawn.

<sup>31</sup> Benchmark features proposed to be incorporated in the COBP under the current review: no account keeping fees; six free non-deposit transactions per month including up to three free over-the-counter withdrawals per month; no minimum monthly balance required; and unlimited free deposits.

<sup>32</sup> CAT (standing for **C**harges, **A**ccess and **T**erms) Standards on BBA includes no one-off or regular charges for everyday transactions, thus implicitly imposing a price restriction on bank charges in the market.





# 1 Introduction

- 1.1 There are increasing calls for the HKMA to address the issue of protection of bank customers in view of public concern about such issues as the impact on customers of increases in banks' fees and charges. The recent motion debate by the Legislative Council ("LegCo") on this subject is a case in point. LegCo carried a motion in February which urges the Government and the HKMA to review the Code of Banking Practice to enhance transparency in banks' revision of fees and charges, and also to examine the empowerment of the HKMA to protect consumers of banking services.
- 1.2 Under the Banking Ordinance, the objective of the HKMA is to provide a measure of protection to depositors and promote the general stability and effective working of the banking system. There is not a clear legal mandate for the HKMA to function as a consumer watchdog and such a role may indeed be inconsistent with its role as a prudential supervisor. In view of the above, the HKMA has embarked on a review of its role in consumer protection. As a first step, a comparative study of banking consumer protection arrangements in the UK, Australia and Hong Kong has been conducted. The objective of the study is to compare and contrast the arrangements for bank customer protection in Hong Kong and overseas regimes. This will then provide a basis to consider whether it is desirable for the HKMA to take on a more explicit role in consumer protection. This paper reports on the results of the comparative study, but makes no policy recommendations on the way forward. The latter will be looked into separately by the HKMA and the Government.
- 1.3 The Report begins with an introduction of the general framework for consumer protection and competition in the countries under study, which usually lays down the parameters within which any relevant sector-specific initiatives operate. It then examines the role of official as well as industry agencies in protecting consumers of financial / banking services. Consumer protection

usually entails regulation of market conduct and a mechanism for resolving customer complaints. Self-regulation by means of Codes of Banking Practices and dispute resolution mechanism such as banking ombudsman schemes are therefore examined in detail. Issues related to making basic banking services accessible to the disadvantaged groups of the community are also explored.

- 1.4 In line with international trends, the countries under study have been or are currently undergoing rapid changes and reforms in financial regulation. During this reform process, it is observed that there is an increasing focus on consumers' interests, and the consumer protection function is usually more formally institutionalised. As these reforms and changes continue, it is desirable to keep abreast of relevant developments in other countries so as to consider whether similar considerations should apply in Hong Kong.

## 2 General Framework for Consumer Protection and Competition

### *The UK Framework*

#### *Policy responsibility*

2.1 In the UK, the Secretary of State for Trade and Industry is responsible for the overall policy on consumer affairs and promotion of competition. The Consumer Affairs Directorate (CA) under the Department of Trade and Industry (DTI) takes the lead within the government on consumer policy and legislation. As a policy directorate, the CA works closely with other parts of Government, business and consumer groups, and regulators such as the Office of Fair Trading and Local Authority Trading Standards Departments.

#### *Enforcement agencies for consumer protection and competition*

2.2 The Office of Fair Trading (OFT) is both a consumer watchdog and a competition authority. The aim of the OFT is “*to advance and safeguard the economic interests of consumers in the United Kingdom by promoting effective competition, removing trading malpractice, and publishing appropriate guidance.*”

2.3 With respect to consumer protection, the OFT encourages traders across all business sectors to provide high standards of customer service and to ensure that complaints are tackled quickly and fairly. It has a duty under the Fair Trading Act to encourage trade associations to develop industry codes of practice for the above purpose. In addition, the OFT gives advice to customers on how to resolve complaints by various schemes, ombudsmen, advice agencies and trading standards officers. The OFT, however, has no power to intervene in individual disputes between a trader and a consumer. In order to educate consumers of their rights and choices, the OFT also publishes a range

of booklets and leaflets, and also provides a public enquiry service known as Consumer Help.

2.4 With respect to promoting competition, the OFT is empowered by the Competition Act 1998 to prohibit anti-competitive agreements and practices and the abuse of a dominant market position. The OFT also has a duty under the Fair Trading Act to identify mergers that may have an adverse impact on competition and public interest for reference to the Competition Commission (see below) for further inquiry.

2.5 The Competition Commission (CC) is the other main competition authority in the UK. The CC is an independent public body established by the Competition Act 1998. It replaced the former Monopolies and Mergers Commission in 1999. The CC has two distinct functions. Firstly, it is responsible for carrying out inquiries into matters referred to it by the other UK competition authorities such as the OFT concerning monopolies, mergers and the economic regulation of utility companies. Secondly, the Appeal Tribunals of the CC hear appeals against decisions of the OFT and the Regulators of utilities in respect of infringements of the prohibitions contained in the Act concerning anti-competitive agreements and abuse of a dominant position.

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## ***The Australian Framework***

### *Policy responsibility*

2.6 The Australian Department of Treasury is responsible for consumer affairs policy at the Commonwealth level. The main functions of the Consumer Affairs Division of the Treasury include:

- consumer protection law reform;
- consumer education and information; and
- industry self-regulation, including codes of conduct and alternative dispute resolution.

*Enforcement agencies for consumer protection and competition*

2.7 The Australian Competition and Consumer Commission (ACCC) is the national competition authority in Australia. It administers competition regulation, fosters adherence to fair trading, promotes competitive pricing and restrains price rises in markets where competition is less than effective. The ACCC administers the Trade Practices Act 1974 and the Prices Surveillance Act 1983 and has additional responsibilities under other legislation. The Trade Practices Act is the principal legislation on consumer protection. The Act deals with, among others, unconscionable conduct, unfair practices, product safety and product information. It also regulates restrictive trade practices by prohibiting certain anti-competitive conduct. All States and Territories have enacted fair trading legislation which mirror the consumer protection provisions of the Trade Practices Act. The ACCC is also responsible for ensuring competition in the financial system.

2.8 Within the financial sector, the Australian Securities and Investments Commission (ASIC) is the key agency responsible for protection of customers of financial services (see next Chapter for details).

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## ***The Hong Kong Framework***

### *Policy responsibility*

- 2.9 Policy responsibility for consumer protection and competition rests with the Economic Services Bureau.
- 2.10 The Secretary for Economic Services has overall responsibility for policy on consumer protection. The Government's principal objectives in consumer protection are to ensure that the products (and services) procured by consumers are safe, the quality is up to their expectation, and the contract terms are fair; and that aggrieved consumers have access to conciliation or relevant legal remedies and are given adequate consumer education and information. In respect of services procured by consumers, examples of laws to ensure that the contract terms are fair include the Unconscionable Contracts Ordinance, Supply of Services (Implied Terms) Ordinance, and the Control of Exemption Clauses Ordinance<sup>33</sup>.
- 2.11 The Consumer Council is an independent statutory body and derives its income mainly from Government funding. Its functions as set out in legislation, are broadly to protect and promote the interests of consumers of goods and services and purchasers, mortgagors and lessees of immovable property. The Council may undertake other functions with the prior approval of the HKSAR's Chief Executive.
- 2.12 Although it does not have the role of a regulator with accompanying enforcement powers, the Consumer Council has an excellent track record of

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<sup>33</sup> The Unconscionable Contracts Ordinance empowers courts to give relief in certain contracts found to be unconscionable. The Control of Exemption Clauses Ordinance limits the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise. The Supply of Services (Implied Terms) Ordinance sets out the terms to be implied in contracts for the supply of services (e.g. implied terms as to care and skill, time for performance and consideration).

performing the above functions very effectively, including achieving a high success rate in its mediation efforts. Some of its principal activities are to:

- collect, receive and disseminate consumer information;
- promote public awareness of consumer rights and responsibilities;
- encourage business and professional associations to establish codes of practice;
- examine consumer complaints and mediate in consumer disputes;
- provide legal assistance to meritorious cases through its Consumer Legal Action Fund; and
- undertake research studies on matters and trade practices affecting competition in the marketplace.

### *Competition policy*

2.13 The Secretary for Economic Services is also responsible for competition policy. There is no formal general competition law or statutory competition authority in Hong Kong. In May 1998, the Government issued a Statement on Competition Policy, which sets out the objective and arrangements for implementation of the Government's competition policy. The Government considers that competition is best nurtured and sustained by allowing the free play of market forces and keeping intervention to the minimum. The Statement provides some general pointers on when the Government should consider intervening in the market. The determining factor is when market imperfections or distortions, or when a business through abusing its dominant market position, limit market accessibility or market contestability and impair economic efficiency and free trade, to the detriment of the overall interest of Hong Kong.

2.14 Under this sectoral approach, all bureaux and departments are responsible for dealing with competition-related issues in sectors under their portfolios.

Against the general pointers in the Statement, they are required to identify obstacles and constraints imposed by the Government and other public sector entities and initiate pro-competition measures in the government and public sector through appropriate administrative or legislative measures. They have to have regard to the competition angle in setting new policies or reviewing existing practices. All bureaux and departments are also required to submit new initiatives for promoting economic efficiency or free trade through competition. Bureaux and departments are required to take account of the unique market and economic conditions of the relevant sectors and other policy considerations such as prudential supervision and service reliability. In addition, the Competition Policy Advisory Group (COMPAG), under the chairmanship of the Financial Secretary, provides a high-level and dedicated forum to review competition-related issues with policy or systemic implications. The Government encourages the private sector to adopt pro-competition measures through voluntary action and self-regulatory regimes and refrain from restrictive practices that impair economic efficiency or free trade. The Government also supports the Consumer Council's work in encouraging industry associations to draw up codes of practice that promote competition.

2.15 Table 2 is a summary table which compares the general framework for consumer protection and promoting competition between Hong Kong and the other two jurisdictions under study.

**Table 2: Regulatory Framework for Consumer Protection / Competition**

	<b>UK</b>	<b>Australia</b>	<b>Hong Kong</b>
<b>Policy responsibility</b>	Department of Trade and Industry	Department of Treasury	Economic Services Bureau on consumer affairs and competition
<b>General legislation on consumer protection</b>	Fair Trading Act	Trade Practices Act and Prices Surveillance Act	General protection in terms of fair trading provided in a number of ordinances instead of a single piece of legislation
<b>Enforcement agencies for consumer protection</b>	Office of Fair Trading (OFT)	Australian Competition and Consumer Commission (ACCC)	Product safety laws enforced by the Government. Consumer Council has non-regulatory role.
<b>General legislation on competition</b>	Competition Act	Trade Practices Act and Prices Surveillance Act	The Government adopts a sector-specific approach to promoting competition as set out in the Statement on Competition Policy.
<b>Enforcement agencies for competition legislation</b>	Competition Commission and OFT	ACCC	Individual departments and regulators, where sector-specific legislative provisions exist.



### **3 Financial Regulation and Banking Consumer Protection / Competition**

#### ***A Single Financial Regulator in UK***

##### *FSA's role in consumer protection and promoting competition*

- 3.1 The UK Treasury is the policy department responsible for financial services and regulation while the Financial Services Authority (FSA) performs the role of a single regulator for the financial services industry.
- 3.2 The new Financial Services and Markets Act (FSMA)<sup>34</sup> (targeted for commencement later this year) provides the framework under which the FSA will operate. It equips the FSA with a full range of statutory powers in regulating various financial services. It also establishes the framework for a single ombudsman as well as compensation schemes to provide further protection for financial services consumers.
- 3.3 Under the FSMA, the FSA is given an explicit mandate in consumer protection and education as follows:
- to promote public understanding of the financial system; and
  - to secure an appropriate degree of protection for consumers.
- 3.4 It is recognised, however, that regulation imposes a cost on society. In pursuing its above regulatory objectives, the FSA should therefore have regard to the following principles:

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<sup>34</sup> The FSMA provides the framework within which a single regulator for the financial services industry, the Financial Services Authority (FSA), will operate. The FSA has four objectives under the FSMA: maintaining market confidence; promoting public understanding of the financial system; the protection of consumers; and fighting financial crime. The FSMA is targeted to come into operation later on this year.

- that regulatory burden or restrictions should be proportionate to the benefits brought to consumers and the industry;
- that the adverse impact on competition should be minimised; and
- that consumers should take responsibility for their decisions.

3.5 In order to fulfil its consumer-related objectives, the FSA provides the following services to consumers:

- establishment of a new single Financial Ombudsman Service (FOS) for the informal resolution of consumer disputes. The existing Banking Ombudsman Scheme which was set up by the industry will be incorporated under the FOS;
- creation of the Financial Services Compensation Scheme (FSCS) for payment of compensation to consumers who suffer financial loss if a financial firm goes bust. The FSCS includes the existing Deposit Insurance Scheme;
- consumer education which encompasses education for financial literacy, provision of consumer information and advice, and a longer-term plan of embedding financial literacy in the education system;
- provision of public enquiry service by a "one stop shop" – Consumer Help, consumer publications and compilation of comparative tables on financial products;
- conducting consumer research to identify areas of major concern for consumers; and
- establishment of the Financial Services Consumer Panel to represent the interests of consumers. The FSA must have regard to any representations made to it by the Panel.

3.6 Competition considerations are also built in the policy formulation process of the FSA. In carrying out its duties, the FSA must have regard to a number of explicitly pro-competitive principles:

- the desirability of facilitating innovation in connection with regulated activities;
- the need to minimise the adverse effects on competition that may arise from anything done in the discharge of its functions; and
- the desirability of facilitating competition between those who are subject to FSA regulation.

3.7 In addition, the rules of the FSA are subject to the competition scrutiny of the OFT and the Competition Commission, who would determine whether such rules distort competition and whether they are justified to protect consumers. When conducting cost benefit analysis on its new regulatory rules, the FSA has to include consideration of the effects on competition. Assessment of the effects of its activities on competition has to be made in future FSA annual reports.

#### *Role of the industry associations*

3.8 In addition to formal regulation, industry self-regulation also plays a role in consumer protection, particularly in terms of upholding market conduct. The British Bankers' Association (BBA) (together with the Building Societies Association and Association for Payment Clearing Services) sponsors the issue of the Banking Code, which sets out the minimum standards of service that banks should provide when dealing with their retail customers. The BBA initiated the recent review of the Banking Code, working together with the other sponsors of the Code, the Government and consumer groups. The BBA also established the Banking Code Standards Board (BCSB) as a replacement for the Independent Review Body, introducing a stronger compliance framework for the Banking Code. In addition, the BBA had commissioned research on financial inclusion to understand the nature of the problem and promote a wider understanding of the work of banks in this area. The banking industry also voluntarily set up the banking ombudsman scheme which will be

incorporated under the single Financial Ombudsman Service scheme to be set up by the FSA.

- 3.9 The BBA is also active in consumer education. It strives to promote public understanding of financial services and financial literacy as one measure to help financial services prosper. It produces information resources such as BankFacts, handy fact-sheets in plain English, on various aspects of banking services. These cover areas such as opening and running a bank account, borrowing money, managing your finances, protecting your interests, etc. It also publishes a host of other financial literature relevant to retail customers of banking services, e.g. banking over the internet, dormant accounts, money laundering, the euro, as well as the Code of Banking Practice. Many of these are also available on their website, which has a section dedicated to consumers.
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### ***A Functional Model in Australia***

#### *National agencies for different objectives*

- 3.10 The Federal Treasurer has the overall policy responsibility for the financial industry, while the Minister for Financial Services and Regulation is the portfolio minister for overseeing financial regulation, consumer affairs and competition policy.
- 3.11 Australia has adopted a functional model of financial regulation since 1998, pursuant to the ‘Wallis Financial Sector Inquiry’ (established by the Treasurer to make recommendations on the nature of the regulatory arrangements that will best ensure an efficient and competitive financial system). A new framework for financial and banking supervision was set up with one agency responsible for each of the main kinds of regulation applied to the financial

system. Each form of regulation is directed at redressing a particular instance of market failure.

3.12 In practice, this model has translated into:

- the Australian Prudential Regulation Authority (APRA) as the agency responsible for *prudential regulation* of financial institutions – which aims to reduce the risk of institutional failure;
- the Australian Securities and Investments Commission (ASIC) as the agency responsible for promoting and regulating standards of *market conduct* by financial institutions, including disclosure standards and consumer protection;
- the Australian Competition and Consumer Commission (ACCC) as the agency responsible for promoting *competition* in the financial system – as part of the Commission’s economy-wide brief for competition; and
- the Reserve Bank of Australia as the agency responsible for protecting the soundness and *stability of the financial system* as a whole (including the payments system).

3.13 Though the primary objective of the APRA, the prudential regulator, is financial safety rather than consumer protection or competition, the APRA is required to "*balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality*". It works closely with the other two regulators to achieve this aim. In particular, it needs to consult the ACCC in cases relating to acquisitions of companies and assets in the financial system.

#### *ASIC as the agency for consumer protection*

3.14 The ASIC is the market integrity and consumer protection regulator for the financial system. Its regulatory aims include the requirement to “promote the

confident and informed participation of investors and consumers in the financial system”. It also regulates and enforces laws that promote honesty and fairness in financial markets, products and services. It achieves its objectives by way of the following means:

- enforcing prohibitions against misleading, deceptive and other unfair conduct;
- setting standards about what deposit taking institutions tell their customers;
- monitoring their sales practices and compliance with codes of practice (including the Code of Banking Practice);
- checking customer complaints systems;
- investigating and taking action against misconduct;
- approving dispute resolution schemes such as the Ombudsman Scheme; and
- establishing the independent Consumer Advisory Panel to represent the interests of consumer groups.

3.15 Education of consumers is a central part of the ASIC’s consumer protection function. Below is the ASIC’s approach to consumer education:

- focus on the areas where consumers are most at risk of financial detriment through lack of knowledge;
- provide consumer information and advice to help consumers to properly consider their financial requirements and make informed choices;
- educate consumers about financial fraud and misleading conduct, and how to avoid it;
- educate consumers of their rights, including their options for resolving complaints; and
- improve financial literacy and numeracy.

3.16 The ASIC has made available the following resources to improve consumer’s financial knowledge:

- FIDO: an online data base of consumer education materials;
- educational campaigns on current problems;
- publications; and
- Consumers Online: one-stop-shop for consumer protection in Australia

3.17 One of the duties of the ASIC is to monitor compliance with the Code of Banking Practice. Each subscribing member of the Code is required to send the ASIC an annual statement of compliance with the Code and on complaints made under the Code. The ASIC produces a report on compliance each year. However, ASIC generally cannot take enforcement action if a code is breached unless a breach of the law is also involved.

#### *Role of ABA*

3.18 Similar to the BBA in the UK, the Australian Bankers' Association (ABA) issues the Code of Banking Practice to self-regulate market conduct. The banking industry has also voluntarily set up the Australian Banking Industry Ombudsman (ABIO) to resolve bank customer disputes. In addition, the ABA provides education materials to consumers. For example, it produces fact-sheets about the banking industry on a range of issues, such as safe banking at ATMs, bank service fees, as well as brochures on loan selection to help consumers select the appropriate type of credit.

#### *Financial reforms*

3.19 The regulation of the Australian financial system will be subject to major reforms under the proposed Financial Services Reform (FSR) Bill. While the Bill is primarily aimed at developing the financial services industry and boosting competition, it also aims to ensure there is a fair deal for consumers. In particular, it is noted that consumer sovereignty is a guiding principle for the reforms, and the Bill aims to build a regulatory framework that enhances

consumer protection and promotes market integrity. Some key aspects of the draft legislation include:

- uniform regulation of all financial products;
- a single licensing framework for financial service providers;
- minimum standards of conduct for financial service providers dealing with retail clients, including a prohibition on unconscionable conduct;
- uniform disclosure obligations for all financial products provided to retail clients; and
- flexibility for authorisation of market operators and clearing and settlement facilities.

3.20 The Bill's implications for consumer protection include, for example, the requirement on financial institutions to put in place internal and external dispute resolution procedures which will be subject to approval by ASIC. As part of its regulatory responsibility, the ASIC will also have the power to approve codes of conduct. In addition, the proposed disclosure regime under the Bill will replace a range of existing disclosure regimes for financial products including those under the Banking Code of Practice.

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## ***Financial Regulation in Hong Kong***

### *Approach on financial supervision*

3.21 The Secretary for Financial Services is responsible for financial services policy in Hong Kong. Financial supervisory duties are divided among different regulators. The principal regulators are the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Office of the Commissioner of Insurance (OCI). They are responsible respectively for regulation of the banking; securities and futures; and insurance and retirement

scheme industries. The Mandatory Provident Fund Authority (MPFA) was recently established to regulate MPF schemes.

#### *HKMA's role in consumer protection*

3.22 The HKMA is predominantly a prudential regulator. While the HKMA has a general duty to “*provide a measure of protection to depositors*” under the Banking Ordinance (BO), there is no explicit mandate with respect to consumer protection. This is because most of the powers specifically conferred by the BO are intended to be exercised in relation to the systemic stability and effective working of the banking system as a whole.

3.23 Under section 7 of the BO, the HKMA has the function, among others, to:

- ensure that the places of business etc. of AIs must be operated in a “*responsible, honest and business-like manner*”;
- “*promote and encourage proper standards of conduct and sound and prudent business practices*” amongst AIs; and
- “*suppress or aid in suppressing illegal, dishonourable or improper practices*” in relation to AIs’ business practices

3.24 However, the above functions must be viewed in light of the principal function of the HKMA “*to promote the general stability and effective working of the banking system.*” This principal function basically relates to macro issues concerning the health of the banking system as a whole and not micro issues such as individual complaints about an AI’s behaviour that have no bearing on the safety and soundness of the institutions. Nevertheless, the HKMA has other means, such as moral suasion, which can be effective in the context of consumer affairs.

3.25 In spite of the above constraint, the HKMA has become increasingly involved in consumer issues. First, the HKMA has been heavily involved in the preparation and review of the Code of Banking Practice which sets standards of business practices applicable to bank/customer relationships. It further undertakes to monitor compliance with the Code. Through this monitoring process, the HKMA endeavours to ensure that AIs deal with their customers fairly and cordially. Second, the HKMA handles complaints from banking customers by referring them to the attention of the senior management of the banks concerned. The HKMA expects the complaints to be fully investigated (though it would not intervene or arbitrate in disputes). Third, it has set up a dedicated hotline to handle complaints in relation to debt collection practices of AIs.

#### *HKMA's role in promoting competition*

3.26 As a public body, the HKMA supports the principles of competition as enunciated in the Government's Policy Statement on Competition. Pursuant to the Consultancy Study commissioned by the HKMA in 1999 to reform and develop the banking sector, the HKMA has embarked on a series of policy initiatives to encourage market liberalisation and promote competition. Such initiatives include the deregulation of the interest rate rules, relaxation of the one-building condition, and allowing restricted licence banks to access the Real Time Gross Settlement (RTGS) system. The HKMA strives to ensure that the competitive mechanism is effective in the banking sector (e.g. that there is no collusion between the banks on price setting). If there were evidence that the competitive mechanism were not working, the HKMA would try to use its powers of persuasion to remedy the problem. If this were ineffective, explicit statutory authority might be required.

### *Role of HKAB*

- 3.27 In comparison with its counterparts in the UK and Australia, the Hong Kong Association of Banks (HKAB) is not as active in terms of self-regulation of market conduct in dealing with personal customers. Nor is it actively involved in consumer education. The role of the HKAB in consumer protection is basically limited to the issuance of the Code of Banking Practice, and it does not monitor compliance with the Code and has not established a dispute resolution mechanism such as an Ombudsman scheme.
- 3.28 Nevertheless, the HKAB, in consultation with the Financial Secretary, has power under the Hong Kong Association of Banks Ordinance to make Rules as to the conduct of the business of banking in Hong Kong. Any breach of the Rules made under the Ordinance could render the relevant bank subject to the disciplinary powers of the Disciplinary Committee of HKAB. Possible sanctions include a reprimand, temporary suspension or termination of membership, and/or temporary suspension of access to clearing facilities. Note that such an arrangement applies only to licensed banks. Also, as the Code is not issued formally under the HKAB Ordinance, the above sanctions are not available for enforcing compliance with the Code.
- 3.29 Table 3 is a summary table which compares (a) the role of the financial regulator in consumer protection and competition issues; and (b) the role of the industry associations in terms of self regulation in Hong Kong and the other two countries under study.

**Table 3: Financial Regulation and Consumer Protection / Competition**

	<b>UK</b>	<b>Australia</b>	<b>Hong Kong</b>
<b>Policy responsibility for financial regulation</b>	H M Treasury	Department of Treasury and Minister of Financial Services and Regulation as portfolio minister	Financial Services Bureau
<b>Approach on financial supervision</b>	The Financial Services Authority (FSA) is established under the Financial Services and Markets Act (FSMA) to regulate various financial services.	Australia adopts a functional model of financial supervision as follows: <ul style="list-style-type: none"> <li>- Australian Prudential Regulation Authority (APRA) – prudential supervision</li> <li>- Australian Securities and Investments Commission (ASIC) – market conduct</li> <li>- ACCC – competition</li> <li>- RBA – financial stability</li> </ul>	Financial supervisory duties are divided among the HKMA, SFC and OCl.
<b>Prudential regulator</b>	FSA – for all financial services	APRA – for all financial services	HKMA – for authorized institutions (AIs)
<b>Regulator’s remit in relation to consumer protection</b>	The FSA’s regulatory objectives under the FSMA include <i>"securing the appropriate degree of protection for consumers"</i> and <i>"promoting public understanding of the financial system"</i> .	ASIC’s regulatory aims include the requirement to <i>"promote the confident and informed participation of investors and consumers in the financial system."</i>	The object of the Banking Ordinance (BO) is to <i>"provide a measure of protection to depositors"</i> and one of the functions of the HKMA is to <i>"promote and encourage proper standards of conduct and sound and prudent business practices"</i> of AIs.
<b>Competition or contestability considerations in the process of financial supervision</b>	In discharging its general functions, the FSA must have regard to <i>"the desirability of facilitating innovation..."</i> ; <i>"the need to minimise the adverse effects on competition..."</i> ; and <i>"the desirability of facilitating competition..."</i> Rules made by the FSA are subject to competition scrutiny of the Office of Fair Trading and Competition Commission.	The APRA is required to <i>"balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality"</i> . It works closely with the other two national financial service regulators to achieve this aim.	Under the sectoral approach to competition, the HKMA is responsible for overseeing competition issues within the banking industry. The HKMA strives to ensure that the competitive mechanism is effective in the banking sector (e.g. there is no collusion between the banks on price setting). If there were evidence that the competitive mechanism were not working, the HKMA would consider taking appropriate actions.

	<b>UK</b>	<b>Australia</b>	<b>Hong Kong</b>
<b>Power of regulator to regulate market conduct</b>	FSA's conduct of business rules apply principally to designated investment business. They have only limited application to banking.	ASIC sets standards about what deposit taking institutions tell their customers; and monitors their sales practices and compliance with codes of practices.	One of the functions of the HKMA is to <i>"promote and encourage proper standards of conduct and sound and prudent business practices"</i> of AIs, but they have to be viewed in the light of its principal function which is related to macro issues concerning the general stability and effective working of the banking system as a whole.
<b>Major tools for protecting banking consumers</b>	<ul style="list-style-type: none"> <li>- Set up statutory ombudsman scheme for complaints handling.</li> <li>- Set up statutory compensation scheme.</li> <li>- Set out rules on regulated firms' internal complaint handling procedures.</li> <li>- Conduct consumer research.</li> <li>- Promote consumer education and financial literacy.</li> <li>- Set up "one stop shop" public enquiry service.</li> <li>- Establish the Financial Services Consumer Panel for consultation and accountability.</li> </ul>	<ul style="list-style-type: none"> <li>- Enforce prohibitions against misleading, deceptive and other unfair conduct.</li> <li>- Set standards about what deposit taking institutions tell their customers.</li> <li>- Monitor sales practices and compliance with code of practices.</li> <li>- Check customer complaints systems</li> <li>- Investigate and take action against misconduct</li> <li>- Approve dispute resolution schemes such as Ombudsman Scheme.</li> <li>- Establish the independent Consumer Advisory Panel to represent interests of consumer groups.</li> <li>- Promote consumer education and financial literacy.</li> </ul>	<ul style="list-style-type: none"> <li>- Heavy involvement in the preparation and review of Code of Banking Practice.</li> <li>- Undertake to monitor compliance with the Code.</li> <li>- Refer customer complaints to AIs and expect fair and speedy resolution.</li> <li>- Set up complaint hotline on debt collection practices.</li> </ul>
<b>Role of industry associations</b>	British Bankers' Association (BBA) is active in industry self-regulation, particularly in terms of upholding market conduct. The BBA develops the Banking Code jointly with others; sets up the Banking Code Standards Board to independently monitor compliance with the Code; commissions research on topical consumer issues; and voluntarily establishes the Banking Ombudsman Scheme. The BBA also plays a role in consumer education and makes available information resources to consumers.	The Australian Bankers' Association (ABA) issues the Code of Banking Practice to self-regulate market conduct and sets up the Australian Banking Industry Ombudsman Scheme for customer dispute resolution. It also provides education materials to consumers and students.	The HKAB and DTCA issue the Code of Banking Practice but play no role in its monitoring or resolving customer disputes, and are seldom involved in consumer research or education.



## 4 Self Regulation by way of Codes of Banking Practice

### *The UK Banking Code*

#### *Background*

4.1 The UK Banking Code was first published in 1991 by the three subscribing associations – the British Bankers' Association, the Building Societies Association and the Association for Payment Clearing Services. It sets minimum standards of good banking practice for banks and building societies to follow when they are dealing with personal customers. The recently revised UK Banking Code came into force on 1 January 2001. The review of the Code was initiated by the issuing organisations.

4.2 The UK Code adopts a comparatively “consumer-friendly” approach. In particular, the UK Code contains a “Key Commitments clause” in the following terms:

“We [*the bank*] promise that we will:

- a. act fairly and reasonably in all our dealings with you [*the customer*];
- b. make sure that all the products and services we offer meet this code, even if they have their own terms and conditions;
- c. give you information about our products and services in plain language, and offer help if there is anything you do not understand;
- d. help you to understand the financial implications of our products and services, how they work, and help you to choose the one that meets your needs;
- e. have secure and reliable banking and payment systems;
- f. make sure that the procedures our staff follow reflect the commitments set out in this code;
- g. consider cases of financial difficulty sympathetically and positively;

- h. if things go wrong, correct mistakes, tell you how to make a complaint, and handle your complaints quickly;
- i. make sure that all products and services meet relevant laws and regulations including those relating to discrimination; and
- j. tell you if we offer products and services in more than one way (for example, on the internet, over the phone, or in branches and so on) and tell you how to find out more.”

4.3 These ten key commitments underpin the bank/customer relationship. Banks have to ensure they abide by the spirit of the Code, as encompassed by the key commitments, as well as the letter of the Code. In case of any doubt about the meaning of a particular provision in the Code, banks should apply these key commitments to provide clarification.

#### *Scope of coverage*

4.4 The Code covers the following main areas:

- Account opening and operation
- Marketing of services
- Interest rates, bank charges and disclosure thereof
- Lending
- Confidentiality
- Financial difficulties
- Complaints handling

#### *Status and membership*

4.5 The UK Code is a voluntary code. Around one hundred and forty banks and building societies, accounting for over 99% of the total market place, subscribe to the Code (including all high street banks). Their customers comprise the vast majority of personal bank customers.

## *Monitoring and Compliance*

- 4.6 The Banking Code Standards Board (BCSB) has recently replaced the Independent Review Body for the Banking and Mortgage Codes (RBBM) to monitor banks and building societies' compliance with the Code. The RBBM had been in existence since the inception of the Banking Code, but the Cruickshank Report on "Competition on UK Banking" noted that the RBBM was considered ineffective as it had no enforcement powers against those who breached the Code. The BCSB now has an "increased budget, new premises and a range of monitoring activities that will monitor compliance much more vigorously." The BCSB is also responsible for registering which banks and building societies subscribe to the Code and gives advice on the interpretation of the Code to its subscribers.
- 4.7 The BCSB is not part of government regulation. It is an industry self-regulatory regime and is sponsored by the three subscribing associations which fund the BSCB by paying an annual subscription based on the size of their business. Though it is funded by the industry, the BCSB says it maintains its independence through an independent board of directors.
- 4.8 The Code provides that the BCSB is the body that monitors compliance with the Code. Banks should have a "Code Compliance Officer" who co-ordinates the annual statement of compliance, compliance visits and other contact with the BCSB. Customers are advised to contact the BSCB regarding any complaint about the running of the Code. The BSCB, however, does not resolve customer complaints, which is a matter for the Banking Ombudsman, which will be incorporated under the Financial Ombudsman Service to be set up by the FSA.

4.9 The BCSB monitors compliance of the Code through:

- a self-certification questionnaire, the Annual Statement of Compliance, signed by chief executives;
- market research activities, including ‘spot checks’ through mystery shopping;
- monitoring the media, tip-offs from the public, etc; and
- compliance inspections undertaken by independent experts

### *Sanctions*

4.10 The BCSB normally first refers allegations of breaches of the Code to the bank or building society concerned to take appropriate action. The BSCB will ask for an explanation from the financial institution.

4.11 The BCSB disciplines those who fail to comply with the Code through the following means:

- publication of the bank’s name and details of the Subscriber’s Breach in the Annual Report of the BCSB;
- issue of directions as to future conduct;
- issue of recommendations on the remedy of past conduct;
- issue of a warning or reprimand;
- cancellation or suspension of a bank’s registration as a Subscriber of the Code; and
- public censure of a bank, by notifying the media of the Board’s findings in respect of breaches and any sanctions applied, and posting the press release on the BCSB website. In addition to notifying the media, notification may also be made to any of the three Associations sponsoring the Code, or any other bodies as the Board may see fit.

4.12 The BCSB believes that these disciplinary sanctions will help engender public confidence in the Code as they demonstrate that financial institutions cannot indulge in unfair, unreasonable or incompetent conduct with impunity. According to the Cruickshank report, the BCSB still has no powers of enforcing compliance though it noted that the BCSB intends to introduce new rules on disciplinary procedures and penalties once these have been negotiated with the BBA.

#### *Fees and charges*

4.13 There are no references in the Code to the level of banks' fees and charges or any exemptions therefrom. The provisions on basic accounts do not say that they should be provided at no charge.

#### *Notification of fee changes*

4.14 The Code provides that banks should provide personal notification at least 30 days before any increase to fees and charges takes effect. Personal notification can be effected by a variety of methods, e.g. letter, statement insert, email, etc.

#### *Dispute resolution*<sup>35</sup>

4.15 The Code provides that banks should have a set of clear and well defined internal procedures for handling complaints which meet the standards set by the FSA. Customers also have to be told of further steps available if internal procedures are not satisfactory, i.e. recourse to the Ombudsman. All banks which subscribe to the Code must belong to the Banking Ombudsman Scheme. However, with the commencement of the Financial Services and Markets Act (FSMA) later on this year, all banks will by law be covered by the Financial

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<sup>35</sup> A more detailed discussion is given in the Chapter on Dispute Resolution and Ombudsman Schemes.

Ombudsman Service, which will be the new statutory body responsible for the resolution of disputes between banks and customers.

*Cruickshank Report's comments on industry self-regulation*

4.16 The Cruickshank report has raised concerns about whether the current self regulatory approach of the Banking Code or BCSB is delivering real benefits to consumers. Though the UK Government recognised that the industry has taken steps to improve compliance with the Code and in particular welcomed the independent scrutiny introduced by the BCSB, it noted however that the first survey by the BSCB found worryingly low levels of compliance on some of the keys aspects of the Code, especially in relation to the disclosure of information to consumers. The UK Government shared the view of the Cruickshank report in this respect, and has therefore set up a Banking Services Consumer Codes Review Group to conduct a review on whether industry codes (such as the Banking Code and the Mortgage Code) are delivering sufficiently strong benefits to consumers. The Review group comprises members from consumer bodies, the financial services industries and others familiar with customer concerns. The review examines :

- whether the voluntary codes are delivering sufficiently strong benefits to consumers;
- what scope there is to introduce greater independence and consumer representation in the drawing up of codes;
- what role there is for the Ombudsman in influencing or determining standards for consumers; and
- whether greater information disclosure can be achieved without the need for further regulation.

## ***Australian Code of Banking Practice***

### ***Background***

4.17 The Australian Code of Banking Practice was first published in November 1993 by the Australian Bankers' Association. The Code was developed by member banks of the Australian Bankers' Association in conjunction with the Australian Competition and Consumer Commission and the Federal Treasury. The Code became fully operative from 1 November 1996. The Code is currently being reviewed by an independent consultant (the Reviewer). The review was started in May 2000. In February 2001, the Reviewer released an Issues Paper, which is an interim report on the Review of the Code and outlines the principal arguments made in the submissions to the Reviewer and contains a set of interim recommendations for the Code. Submissions from the public have been invited to the Paper and the consultation period is scheduled to end on 4 June 2001.

4.18 The Code seeks to foster good relations between banks and customers and to promote good banking practice by formalising standards of disclosure and conduct which banks that adopt the Code agree to observe when dealing with their customers. The Code serves to deal with consumer protection issues not covered in legislation, and elaborate or build upon legislative requirements. The objectives of the Code are to:

- describe standards of good practice and service;
- promote disclosure of information relevant and useful to customers;
- promote informed and effective relationships between banks and customers; and
- require banks to have procedures for resolution of disputes between banks and customers.

## *Scope*

4.19 The Code's scope of coverage is divided into three main parts:

- **disclosure requirements** (e.g. in relation to the terms and conditions of banking services, including details of fees and charges and details of how interest will be calculated and credited or debited to the account);
- **principles of conduct** (e.g. in relation to pre-contractual negotiations and the opening of accounts; the bank's duty of confidentiality to a client, and the client's right to privacy; provisions limiting guarantees and protecting guarantors); and
- **dispute resolution** (e.g. procedures for complaints handling, Ombudsman scheme)

## *Status and Membership*

4.20 The Code is an instrument of banking self-regulation. Banks adopt the Code on a voluntary basis. However, once banks commit to adopt the Code, they are contractually bound to comply with it. The Code provides that "any written terms and conditions [of a banking service] shall include a statement to the effect that the relevant provisions of the Code apply to the banking service..." Where a bank complies with this provision and incorporates the Code into the contract between itself and its customers, the Code will have contractual force. Nevertheless, it is also generally conceived that even if no express incorporation occurs, the Code is incorporated impliedly as a matter of accepted banking practice and usage.

4.21 Currently, all banks with significant retail operations have adopted the Code.

## *Monitoring and Compliance*

- 4.22 Unlike the practice in the UK, it is not specially provided in the Code which organisation monitors and reports on compliance with the Code. In practice, the Code is monitored by the Australian Securities and Investment Commission (ASIC) which was established by the ASIC Act as one of three Commonwealth government bodies that regulate financial services. The ASIC is responsible for, among other things, promoting and regulating appropriate standards of market conduct by financial institutions, including disclosure standards and consumer protection. Under the proposed Financial Services Reform (FSR) Bill, ASIC will be given a power to approve industry codes of practice though it will not be mandatory for an industry code to be approved.
- 4.23 As part of its role in consumer protection, the ASIC monitors compliance with codes of practice (including the Code of Banking Practice, Building Society Code of Practice, Credit Union Code of Practice and Electronic Funds Transfer Code of Practice). The monitoring is conducted by having banks annually self-assess their compliance against a pre-determined questionnaire. ASIC requires each institution to complete a statement of compliance and report on the number and nature of any disputes that arose during the reporting period. Institutions must report on:
- whether institutions' internal documents and procedures comply with each section of the Code;
  - whether appropriate staff are trained in respect of compliance with the Code;
  - whether it has internal assessment systems in place to monitor compliance;
  - whether it has identified any recurrent areas of non-compliance; and
  - statistics on Code-related disputes dealt with internally as well as those referred to the Australian Banking Industry Ombudsman (ABIO), which is an industry-based scheme.

- 4.24 The Australian Banking Industry Ombudsman (ABIO) also reports to the ASIC on the number and types of disputes referred to it regarding breaches of the Code or provisions of services covered by the Code, but it cannot handle complaints of non-compliance that do not involve a financial loss incurred to the complainant. The ASIC reports annually on the results of the monitoring process. Banks who do or do not comply with the Code are identified in ASIC's reports.
- 4.25 The monitoring process is dependent solely on self-assessment carried out by banks with no external oversight. The existing monitoring process has been criticised by consumer groups and the New South Wales Government for its lack of transparency and independence. Even the ASIC has found it unsatisfactory and has indicated that it plans to review the monitoring process to assess whether the self-assessment process could be made more effective and notes that it should be complemented by some form of external monitoring.

### *Sanctions*

- 4.26 There is no provision in the Code for the imposition of sanctions on subscribing banks for breaching the Code. The ASIC generally cannot take enforcement action if a code is breached unless a breach of law is also involved. It would as a measure of deterrence, in some instances, publicise significant non-compliance. The ASIC considers that, in part, enforcement of the Code occurs through internal and external dispute resolution processes. However, it admits this is not a satisfactory arrangement as the dispute resolution processes work best in circumstances where a dispute involves a direct financial loss, and is a one-off occurrence. They are less effective in cases of Code breaches that do not involve a direct financial loss, and where there is evidence of systemic breaches. There is therefore no encompassing process for dealing with allegations of Code contravention and for imposing appropriate sanctions. In some cases, a breach of the Code may be a breach of the contract between the

bank and the customer thereby giving the customer the right to take legal action for breach of contract.

### *Fees and charges*

4.27 There is no provision in the Code relating to banks' level of fees and charges. Some banks have special products (for which there are substantial fee discounts and exemptions) for special classes of customers, e.g. financially disadvantaged, pensioners, students, disabled, but these would be entirely at the discretion of individual banks.

### *Notification of fee changes*

4.28 The Code currently requires 30 days advance notice in writing of any new fee or charge or any variation in the method by which interest is calculated or the frequency with which it is debited or credited. Any other variation to fees and charges or interest rate or otherwise to terms and conditions may be notified as late as the day the variation takes effect through media or in writing.

4.29 The proposed FSR Bill will, amongst other things, provide disclosure obligations that apply to financial service providers who provide services to retail clients. Those obligations would not be product or banking specific. The FSR Bill would mandate that 30 days advance notice is required for any change which relates to fees and charges. For any other change, such as changes in interest rates or variations to terms and conditions, notice is required to be given as soon as practicable *after* the change occurs (and in any case within three months, except if the changes are not adverse to the consumer's interest then notification can be delayed by up to 12 months). The FSR Bill also provides that the form of notification must be in writing, electronically or in the way specified in the regulations. Until the regulations have been made it is not known whether notification through the media will be permitted and if so whether direct written notice must be given to each affected consumer when a

bank sends the next statement of account. The Australian Treasury has commented that the list of disclosure requirements is cast in fairly general terms and industry codes could be employed to flesh out the detailed requirements of particular products in specific industries.

### *Dispute resolution*<sup>36</sup>

4.30 The Code requires banks to have a readily accessible internal process for handling disputes between the bank and customers. The Code provides that banks should have available for its customers free of charge an external and impartial process such as the Australian Banking Industry Ombudsman. Under the current draft of the FSR Bill, all holders of an Australian Financial Services licence (including banks) will have to provide their retail customers with access to appropriate internal and external complaints and dispute resolution processes that are approved by ASIC in accordance with the regulations. The Australian Government has indicated that internal procedures will be required to comply with the Australian Standard on Complaints Handling, while external procedures must satisfy the guidelines in the ASIC Act. Failure to provide the appropriate dispute resolution procedures will be a breach of a licence condition.

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## ***Hong Kong Code of Banking Practice***

### *Background*

4.31 The Code of Banking Practice in Hong Kong was issued in 1997 jointly by the Hong Kong Association of Banks (HKAB) and the DTC Association (DTCA) (i.e. the industry associations), and endorsed by the Hong Kong Monetary

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<sup>36</sup> A more detailed discussion is given in the Chapter on Dispute Resolution and Ombudsman Schemes.

Authority (HKMA), the regulator. The Code sets out recommendations to be observed by authorized institutions (AIs) in dealing with personal customers. The HKMA has played an active role in developing the Code and in the review of the Code which is currently being undertaken.

4.32 The objectives of the Code are -

- to promote good banking practices by setting out the minimum standards which institutions should follow in their dealings with personal customers;
- to increase transparency in the provision of banking services so as to enhance the understanding of customers of what they can reasonably expect of the services provided by institutions;
- to promote a fair and cordial relationship between institutions and their customers; and
- through the above, to foster customer confidence in the banking system.

### *Scope*

4.33 The scope of coverage of the Code is in some ways more elaborate than the UK and Australian Codes, and its provisions are written in a more prescriptive manner. It covers five main areas:

- general principles applicable to the relationship between banks and customers (e.g. in relation to terms and conditions, fees and charges, bank marketing, customer complaints);
- accounts and loans (e.g. operation of accounts, notice of changes in fees, loans and overdrafts, mortgage lending);
- card services (e.g. issuance of cards, fees, interest rates, unauthorised transactions);
- payment services (e.g. cross-border payments); and
- recovery of loans and advances (e.g. hire of debt collection agencies).

4.34 Under the current review of the Code, it is intended that a new section on electronic banking be added.

#### *Status and Membership*

4.35 The Code is a non-statutory Code issued on a voluntary basis by the industry associations. All members of the industry associations are subscribers to the Code.

#### *Monitoring and Compliance*

4.36 No reference is made in the Code as to which body would be formally responsible for monitoring AIs' compliance with the Code, though the HKMA undertakes to monitor compliance as part of its regular supervision. This responsibility is regarded as consistent with its function under the Banking Ordinance to promote and encourage proper standards of conduct and sound and prudent business practices among AIs.

4.37 The HKMA expects all AIs to comply with the Code. It monitors AIs' compliance with the Code through on-site examinations and conducting surveys. In addition, the internal audit department of each institution is required to submit an annual assessment report to the HKMA in relation to the institution's compliance with the Code. There is also a special unit within the HKMA to process customer complaints against AIs and through this process the HKMA identifies possible breaches of the Code.

#### *Sanctions*

4.38 The Code makes no reference to any sanctions for non-compliance, such as those available to the monitoring body in the UK. However, the HKMA expects AIs to rectify non-compliance when it is brought to their attention. Moreover, if an AI were to blatantly disregard the provisions of the Code, the

HKMA would have to assess whether the business of the institution is being conducted with integrity, prudence and the appropriate degree of professional competence, which is one of the criteria for continuous authorisation. Clearly, removal of authorisation would be a drastic and disproportionate measure. But it does provide a "back-stop" mechanism on which the HKMA may rely for its use of moral suasion.

### *Fees and Charges*

4.39 As in the UK and Australia, there is no provision in the Code relating to the level of banks' fees and charges. There traditionally have not been many types of fees applicable to customers' accounts in Hong Kong. However, in view of increasing competition, including in relation to the pending deregulation of interest rate rules, some banks are beginning to increase or introduce new fees and charges. The HKMA considers the setting and revision of fees and charges to be a commercial matter for AIs. Nevertheless, the HKMA has urged banks to have due regard to the resulting impact of changes in fees and charges on disadvantaged groups in the community. Some banks have already voluntarily exempted certain members of the community from fees and charges, such as customers receiving social welfare benefits, the disabled, or customers over 65 years old. Moreover, some banks have introduced new accounts which are free of charge if delivery channels other than branches are used. However, the Government has indicated that it would consider appropriate remedial actions if it appeared that certain members of the public were disenfranchised from basic banking services.

### *Notification of fee changes*

4.40 The Code provides that AIs should give 30 days' notice to affected customers before any change in fees and charges takes effect. The Code, however, does not specify how such notice should be given to affected customers. Currently, banks generally comply with this provision by way of notices posted in

banking halls. The current review of the Code has recognised the need to strengthen this provision. It is proposed therefore that a written notice should be sent to each affected customer as the preferred method. Where this is unlikely to be effective (e.g. in the case of passbook accounts where the current address of the customers may not be known to the bank), authorised institutions should adopt other means of notification that do not rely unduly on the customer's own initiatives.

### *Dispute resolution*

- 4.41 The Code provides that AIs should establish procedures for handling customer complaints in a fair and speedy manner, and sets out some recommendations on how AIs should efficiently handle disputes (e.g. ensure staff are trained to handle complaint procedures, providing acknowledgement of written complaints within 7 days, etc.). The relevant provisions refer only to internal procedures against which no established standards can be measured (such as a national standard in Australia). The HKMA has not issued any specific guidelines to AIs in this respect similar to the FSA's rules on complaint handling. There are no external dispute resolution schemes available to banking customers in Hong Kong, such as the Ombudsman schemes in Australia and UK. In the event that customers' complaints cannot be resolved with an AI, customers can refer the complaint to the HKMA which will expect the AI concerned to address the matter to its satisfaction. The HKMA cannot, however, intervene or arbitrate in the dispute, nor can it award compensation. The industry Associations (i.e., HKAB and DTCA) do not play any role in dispute resolution.
- 4.42 Table 4 is a summary table which compares the main features of the banking industry code of practice in the UK, Australia and Hong Kong.

**Table 4: Code of Banking Practice**

	<b>UK</b>	<b>Australia</b>	<b>Hong Kong</b>
<b>Issuer</b>	British Bankers Association (BBA), Building Societies Association and Association for Payment Clearing Services	Australian Bankers Association (ABA)	Hong Kong Association of Banks (HKAB) and Deposit Taking Companies Association (DTCA)
<b>Status</b>	Non-statutory	Non-statutory	Non-statutory
<b>Subscribers</b>	Around 140 banks and building societies (99% of total market place)	Most banks offering retail services	All members of HKAB and DTCA
<b>Scope of coverage</b>	<ul style="list-style-type: none"> <li>- Account opening and operation</li> <li>- Marketing of services</li> <li>- Interest rates, bank charges and disclosure thereof</li> <li>- Lending</li> <li>- Confidentiality</li> <li>- Financial difficulties</li> <li>- Complaints handling</li> <li>- The Code also contains 11 key commitments to customers, including the promise to act fairly and reasonably in all dealings</li> </ul>	<ul style="list-style-type: none"> <li>- Disclosure requirements (of terms and conditions, fees and charges);</li> <li>- Principles of conduct (in relation to pre-contractual negotiations, opening of accounts, privacy and confidentiality, third party guarantees); and</li> <li>- Dispute resolution (procedures for complaints handling, Ombudsman scheme)</li> </ul>	<ul style="list-style-type: none"> <li>- Terms and conditions, interest rates, fees and charges, and disclosure thereof</li> <li>- Bank marketing</li> <li>- Complaints handling</li> <li>- Privacy and confidentiality</li> <li>- Account opening and operation</li> <li>- Lending, mortgage lending</li> <li>- Third party guarantees</li> <li>- Card services, setting of APRs, liability for loss</li> <li>- Payment services</li> <li>- Debt collection practices</li> </ul>
<b>Monitoring agency</b>	Banking Code Standards Board (BCSB) – independent body sponsored by industry associations	Australian Securities and Investments Commission (ASIC) – regulator of standards of market conduct in financial services	Hong Kong Monetary Authority (HKMA) – prudential regulator
<b>Monitoring tools</b>	<ul style="list-style-type: none"> <li>- Annual Statement of Compliance</li> <li>- Market research activities, including 'spot checks' through mystery shopping</li> <li>- Monitoring the media, tip-offs from the public</li> <li>- Compliance visits by independent experts</li> </ul>	<ul style="list-style-type: none"> <li>- Statement of compliance</li> <li>- Reports by banks on the number and nature of unresolved disputes</li> <li>- Reports by the Australian Banking Industry Ombudsman (ABIO) to ASIC on number and nature of disputes referred to it</li> </ul>	<ul style="list-style-type: none"> <li>- Compliance surveys</li> <li>- On-site examinations</li> <li>- Annual assessment report by AIs' internal audit departments to HKMA</li> <li>- Monitoring media reports and customer complaints against banks</li> </ul>

	<b>UK</b>	<b>Australia</b>	<b>Hong Kong</b>
<b>Sanctions available in case of non-compliance</b>	<ul style="list-style-type: none"> <li>- Publication of the bank name and details of the breach in BCSB's Annual Report</li> <li>- Issue of directions as to future conduct</li> <li>- Issue of recommendations on the remedy of past conduct</li> <li>- Issue of warning/reprimand</li> <li>- Cancellation or suspension of a bank's registration to BCSB</li> <li>- Public censure of a bank</li> </ul>	ASIC generally cannot take enforcement action if a code is breached unless a breach of the law is also involved. In some instances, the ASIC publicises significant non-compliance.	No informal sanctions available. In the case of serious breaches of the Code, statutory powers are available, but HKMA would generally rely on moral suasion.
<b>Review mechanism</b>	Carried out by industry associations	Independent review commissioned by ABA	Carried out by HKMA in consultation with HKAB and DTCA
<b>Remarks</b>	UK Government has commissioned a review on whether self regulatory approach of industry codes is delivering sufficiently strong benefits to consumers. Result of review is expected in April 2001.	Code is currently under review.  The Financial Services Reform Bill will affect disclosure requirements and internal dispute handling procedures in the current Code.	Code is currently under review. Scope of coverage will be expanded to include electronic banking.

## 5 Dispute Resolution and Ombudsman Schemes

### *United Kingdom*

#### *Role of Regulator in Dispute Resolution*

- 5.1 Under the Financial Services and Markets Act (FSMA), the FSA is required to establish a single, compulsory ombudsman scheme for the speedy and informal resolution of disputes between customers and authorised firms (see below section on *Financial Ombudsman Service*). In addition, the FSA is responsible for making the complaints handling rules for firms authorised and regulated by the FSA (banks, building societies, insurance companies, and investment firms, etc). The rules have recently been published by the FSA in conjunction with the Financial Ombudsman Service (FOS). The rules will apply when the FSMA comes into force later this year.
- 5.2 The complaint handling rules are statutory rules which require all authorised firms to deal properly and promptly with consumer complaints, not only confined to compliance with the Code. The rules set out the standards which all firms' complaint procedures must meet. The key requirements in the rules are that firms must:
- have in place and operate appropriate and effective internal complaint handling procedures and consumers must be made aware of these procedures;
  - resolve complaints within eight weeks and must notify complainants of their right to go to the FOS if they remain dissatisfied; and
  - report information about their complaints handling to the FSA twice yearly.

*Office of the Banking Ombudsman [the “old” scheme]*

- 5.3 The UK Office of the Banking Ombudsman was set up by the industry voluntarily in January 1986 with the aim of resolving individual complaints about banking services.
- 5.4 The Office is headed by the Banking Ombudsman, who is appointed by the Council of the Ombudsman Scheme. The Council is made up of eight members - five independent members and three appointed by the banks. The Council is not involved in decisions on individual cases. Its main functions are to preserve the Ombudsman’s independence and to keep the scheme under review.
- 5.5 Banks subscribe to the scheme on a voluntary basis, but the UK Banking Code states that all banks which follow the Code must belong to the Ombudsman Scheme or another independent arbitration scheme where appropriate. All major banks are covered under the Scheme, including all big high street banks (but not all their associate companies). The cost of the scheme is raised by a levy on the banks.
- 5.6 The Ombudsman’s service is provided free to the following complainants who are eligible for its services:
- individuals;
  - partnerships (unless all the partners are companies);
  - unincorporated bodies like a members’ club (unless all members are companies); and
  - small companies (i.e. company with an annual turnover of less than GBP1 million)

5.7 The Banking Ombudsman handles complaints about:

- banking services;
- credit card services;
- executor and trustee services; and
- advice and services relating to taxation, insurance and certain investments.

5.8 The Ombudsman cannot deal with complaints about:

- banks' general interest rate policies;
- general bank policies and practices;
- where the claim could involve more than GBP100,000; or
- where the claim has already been dealt with by a court or other independent body.

5.9 In addition, unless there has been maladministration or unfair treatment, the Ombudsman cannot deal with complaints about a bank's commercial judgement relating to lending or security, a bank's decision in exercising a discretion under a will or trust, or a bank's failure to consult beneficiaries before exercising a discretion under a will or trust – unless there is a legal obligation to do so.

5.10 The Ombudsman can award compensation of up to GBP100,000. The bank has to accept the Ombudsman's decision. The complainant does not have to, and retains the right to go to court instead.

#### *Financial Ombudsman Service (FOS) [the "new" scheme]*

5.11 There are currently eight complaint-handling and ombudsman schemes in the financial services sector of the UK (namely the Banking Ombudsman; Building Societies Ombudsman; Insurance Ombudsman; Investment Ombudsman;

Personal Investment Authority Ombudsman; Personal Insurance Arbitration Service; Securities and Futures Authority (SFA) Complaints Bureau and Arbitration Service; and FSA Direct Regulation Complaints Unit). As part of the regulatory reform under the FSMA, these eight schemes will be brought together to form the Financial Ombudsman Service (FOS) – a new, statutory “one stop” complaint handling organisation for the financial sector. The FSA, amongst other things, appoints the Board of the FOS (which appoints the Chief Ombudsman) and approves its budget.

- 5.12 Similar to the Banking Ombudsman Scheme, the objective of the FOS is to provide consumers with a free, independent service for dealing with disputes about financial services in a quick manner and with minimum formality. The FOS’s responsibilities are to investigate, adjudicate on, and resolve complaints relating to banking, insurance, and investments.
- 5.13 The FOS is headed by a Chief Ombudsman, and divided into three ombudsman divisions (each headed by a principal ombudsman) to take charge of 1) insurance, 2) investment and 3) banking and loans areas. There is also a fourth customer contact division which screens customers’ initial contact with the ombudsman service. The FOS will make decisions on banking cases in accordance with the rules of the Banking Ombudsman.
- 5.14 Under the FSMA, all authorised firms – banks and building societies, insurance companies and investment firms etc. – are covered by the FOS on a compulsory basis for activities regulated by the FSA, plus those currently unregulated activities – such as mortgage lending - which are currently covered by existing ombudsman schemes. Access to the FOS continues to be open to private individuals and small businesses (with annual turnover of less than GBP1 million) and the Ombudsman can make the same amount of money award, i.e. GBP100,000.

- 5.15 It is currently proposed that the FOS's funding be a combination of a "general levy" paid by all firms under the ombudsman service's jurisdiction and a "user pays" element (i.e. case fees) paid by firms for individual complaints. For the first year of the FOS's operation, it is proposed to raise 50% of the funds through industry levies and 50% through case fees.

*Cruickshank Report's comments*

- 5.16 The Cruickshank Report found that the self-regulatory mechanism of the Banking Ombudsman Scheme was generally not effective. Though the Banking Ombudsman could award compensation to individuals who complained to him that they had suffered as a result of a bank breaching the Code, he had no powers to enforce the Code generally. The report said the Ombudsman had also stated in a recent review of the codes that the lack of a wider policing and enforcement mechanism undermines the effectiveness of the codes.
- 5.17 The report argued that the UK Government has implicitly recognised the failure of the self-regulatory approach of the Banking Ombudsman Scheme in its decision to subsume the voluntary scheme within the new statutory FOS. The report noted that while the Banking Ombudsman was technically independent, its terms of reference were drawn up by the banking industry which precluded the Banking Ombudsman, among other things, from investigating complaints relating to a bank's commercial judgement in decisions about lending or security or to a bank's general interest rate policy. In taking individual decisions, the Ombudsman was required to have regard to 'general principles of good banking practice and any relevant codes of practice.' These codes of practice were however also drawn up by the industries themselves without direct input from consumers or consumer groups. The report also noted that the current practice of using the industry codes to determine what is 'fair and reasonable' is inappropriate because banks should not determine the standards against which complaints against them are judged.

The report recommended the Government to ensure that the rules of the new FOS specify that the Ombudsman will draw up consumer guidelines, after consultation with interested parties, including consumers, the Office of Fair Trading, the FSA and the industry. The Ombudsman should then use these guidelines to determine whether a banking supplier's actions are 'fair and reasonable'. However, the government did not agree to this recommendation noting that the Ombudsman was primarily a dispute resolver, rather than a standard setter or regulator. The FSA was also concerned that giving the Ombudsman a more specific regulatory role could lead to the introduction of conduct of business regulations without the accountability and cost benefit analysis checks required of the FSA.

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## **Australia**

### *Setting Standards for Dispute Resolution Procedures*

- 5.18 The Australian Code of Banking Practice requires banks to have a readily accessible internal process for handling disputes between the bank and customers. Where disputes are not resolved to the satisfaction of the customer, banks should inform the customer in writing of the reasons for the outcome and further action the customer can take such as an external process for resolution of disputes. Banks should have available for its customers free of charge an external and impartial process, e.g., the existing Australian Banking Industry Ombudsman Scheme (ABIO).
- 5.19 Under the current draft of the Financial Services Reform (FSR) Bill, all holders of Australian Financial Services licence (including banks) will have to provide their retail customers with access to appropriate internal and external complaints and dispute resolution processes that are approved by ASIC in accordance with the regulations. Failure to provide the appropriate dispute resolution procedures will be a breach of a licence condition.

5.20 It is anticipated that for internal dispute resolution procedures, they must comply with the Australian Standard on Complaints Handling. The Standard is developed by Standards Australia, a non-Government body which is endorsed and partially funded by the Commonwealth Government. Its standards are nationally recognised and supported by many industries. The Standard notes that a comprehensive complaints system should –

- increase the level of consumer satisfaction with the delivery of products and services and enhance the consumer/provider relationship;
- recognise, promote and protect consumers' rights, including the right to comment and complain;
- provide an efficient, fair and accessible mechanism for resolving consumer complaints;
- provide information to consumers on the complaints handling process for the services and products of the organisation; and
- monitor complaints in an endeavour to improve the quality of products and services.

5.21 For banks' external complaint resolution procedures, they must satisfy regulatory guidelines set out by the ASIC Act. (It is anticipated that current schemes such as the ABIO will largely satisfy the FSR Bill requirements.)

#### *Australian Banking Industry Ombudsman Scheme (ABIO)*

5.22 The ABIO is an industry based, self-regulatory scheme set up in 1990. The aim of the scheme is to provide an independent and prompt resolution of disputes against the criteria of law, good banking practice and fairness. Similar schemes exist in other sectors such as insurance. Currently all retail banks operating in Australia are covered by the ABIO.

- 5.23 The responsibility of the ABIO is to facilitate the satisfaction, settlement or withdrawal of disputes relating to the provision of banking services by banks to individuals by agreement, by making recommendations or awards, or by other means as seem expedient.
- 5.24 The ABIO accepts complaints from individuals or small businesses (incorporated or unincorporated business with less than 15 employees, a turnover of less than A\$1 million and independently owned and managed). It can award compensation up to A\$150,000. The service is free for non-business applicants. However, in the case of business applicants, a free service is provided only up to the point of the Ombudsman's initial consideration of the merits of the case. After that, cost sharing will apply if the business applicant requests a detailed written decision or further consideration of the case by the Ombudsman. However, the Ombudsman would reimburse any fees paid by the business applicant when a dispute is finally determined to be in its favour.
- 5.25 The Ombudsman can consider complaints which are about a specific banking service that the bank has provided to the customer, or relate to the bank's actions having directly caused the customer to suffer a financial loss. (The Ombudsman cannot handle complaints of non-compliance with the Code that do not involve a financial loss incurred to the complainant). The Ombudsman does not consider complaints:
- that relate to a bank's commercial judgement in decisions about lending or security (unless maladministration in lending matters is involved);
  - that relate to a bank's general interest rate policies;
  - that the Ombudsman believes should be more appropriately dealt with by court or another independent conciliation or arbitration procedure;
  - where the amount to be claimed exceeds A\$150,000; and

- where the dispute relates to a banking service provided to an incorporated entity which does not meet the requirement of a business applicant, or which is a trustee, charitable organisation or statutory authority.
- 5.26 The Ombudsman's decision is binding on a bank only if the applicant accepts the decision. It remains open for the applicant to reject the Ombudsman's decision and proceed with other remedies, such as the Court. Both the bank and the customer have a right to appeal a decision by the Ombudsman and the case may be reviewed and further investigated by the Ombudsman upon provision of further information.
- 5.27 The structure of the ABIO is divided into three bodies: the Board, the Council, and the Ombudsman. The ABIO Board comprises six representatives of member banks. Its functions are to appoint the Council and its Chairman, to amend the Terms of Reference of the ABIO, and to decide the annual budget and how the funding will be apportioned between member banks. The ABIO Council sits between the Ombudsman and the Board to ensure the Ombudsman's impartiality and independence from the funding banks. The Council is made up of 3 banks, 1 small business and 2 consumer representatives and chaired by an independent chairman. The Council is responsible for appointing the Ombudsman and assisting in developing the policies of the scheme.
- 5.28 The member banks of the ABIO fund the scheme. The funding is structured on a user pays basis. The amount charged reflects the number of complaints and the complexity of the complaints lodged against a particular bank. The more complaints received by the Ombudsman's office about a particular bank, the more that bank must contribute.
- 5.29 It appears from the current review of the Australian Code of Banking Practice that the ABIO scheme is regarded as a critical element of consumer protection for bank customers, providing consumers an affordable way to litigate a dispute

with a financial services provider in an independent and professional manner. The review also suggested that without the existence of a scheme like the ABIO, consumer protection laws and Codes of Practice would be of little practical assistance or relevance to consumers. The review's interim report proposes that the ABIO be considered as one of the organisations for the role of monitoring compliance with the Code.

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## ***Hong Kong***

### *HKMA's Policy on Handling Customer Complaints*

- 5.30 In the absence of an alternative external dispute resolution mechanism such as an Ombudsman scheme, the HKMA plays a role in handling complaints from the public relating to the banks' provision of banking services. It has also set up a complaint hotline to deal with debt collection complaints against AIs.
- 5.31 The HKMA's role is to try to ensure that the customer's complaint is dealt with appropriately by the bank involved. The HKMA sends the complaint to the bank and reviews its response to check that it has investigated the complaint and responded appropriately to the customer. If this is not the case, the HKMA will pursue the matter with senior management of the bank involved.
- 5.32 If the complaint raises doubts about the bank's operating procedures or about the integrity or prudence of its business practices, the HKMA will want to pursue this further and ensure that any necessary remedial action is taken. In such circumstances, formal supervisory powers may be exercisable.
- 5.33 Note that the HKMA is not in a position to arbitrate in disputes or to force banks to pay compensation to customers. Nor is it able to fine or reprimand banks. However, its involvement in complaints handling and its insistence on

banks dealing thoroughly with complaints can assist consumers in getting their complaints resolved satisfactorily.

5.34 Table 5 is a summary table which compares the dispute resolution mechanism between Hong Kong and the other two jurisdictions under study.

**Table 5: Dispute Resolution Mechanism and Ombudsman Schemes**

	<b>UK<sup>37</sup></b>	<b>Australia</b>	<b>Hong Kong</b>
<b>General provision of industry code on internal complaint handling procedures</b>	Subscribers to the Code should provide customers with details of internal complaints procedures to handle complaints fairly and quickly.	Banks should have a readily accessible internal process for handling disputes between the bank and customers.	Institutions should establish procedures for handling complaint procedures in a fair and speedy manner.
<b>Provision of industry code on mechanism to deal with unresolved complaints</b>	Customers should be told of the recourse to the relevant ombudsman or arbitration scheme available (e.g. Banking Ombudsman, or the Financial Ombudsman Service when it is set up)	Banks should have available for customers free of charge an external and impartial process (not being an arbitration), having jurisdiction similar to which applies to the existing Australian Banking Industry Ombudsman Scheme	The Code has no specific provisions in this regard.  However, the complaint can be referred to the HKMA which tries to help ensure banks act fairly and reasonably in relation to their customers, but it cannot arbitrate in the dispute or force banks to pay compensation.
<b>Rule / standards on internal complaint handling procedures</b>	FSA makes statutory rules on complaint handling procedures with which all FSA-authorized firms must comply.	Under the proposed Financial Services Reform Bill (FSR Bill), all licensed financial service providers must have appropriate internal dispute resolution procedures which comply with <i>Australian Standard on Complaints Handling</i> (or other recognised Australian standard).	No specific rules, but the HKMA expects banks to treat customers in a fair and transparent manner. The HKMA encourages banks to have procedures for fully investigating all complaints by customers.
<b>Ombudsman Scheme</b>	The Banking Ombudsman (together with other existing ombudsman schemes) will be subsumed into the Financial Ombudsman Service (FOS).	Australian Banking Industry Ombudsman Scheme (ABIO)	N/A

<sup>37</sup> Upon the enactment of the Financial Services and Markets Act (FSMA), the eight existing complaints-handling and ombudsman schemes (including the Banking Ombudsman, Building Societies Ombudsman, Insurance Ombudsman, Investment Ombudsman, and the Personal Investment Authority Ombudsman) will be brought together to form the Financial Ombudsman Service – the “one stop” complaints handling organisation. The description in this table relates to this new scheme where applicable.

	<b>UK<sup>37</sup></b>	<b>Australia</b>	<b>Hong Kong</b>
<b>Status of ombudsman scheme</b>	FOS is a statutory scheme while the Banking Ombudsman is an industry-based scheme.	Industry based, self-regulatory scheme	N/A
<b>Role of the financial sector regulators</b>	The FOS is set up by the FSA, as required by legislation.  The FSA is the operator of the ombudsman scheme. FSA appoints the scheme's Board, approves the scheme's budget, approves the rules and standard terms of the scheme, and determines the scope of the scheme's jurisdiction.	ABIO is a non-government scheme  Under the proposed FSR Bill, all licensed financial service providers will need to have external complaints resolution procedures which must satisfy regulatory guidelines set out by regulation. It is anticipated that the ABIO will largely satisfy the FSR Bill requirements.	N/A
<b>Objective of ombudsman scheme</b>	Provide consumers with a free, independent service for dealing with disputes about financial services in a quick manner and with minimum formality	Provide an independent and prompt 'alternative dispute resolution' service in relation to complaints made about financial service providers	N/A
<b>Membership of ombudsman scheme</b>	Compulsory for all FSA-authorized firms	Voluntary (all retail banks subscribe)	N/A
<b>Who can access the ombudsman's service</b>	<ul style="list-style-type: none"> <li>- Individuals</li> <li>- Partnerships</li> <li>- Unincorporated bodies like a members' club</li> <li>- Small companies (with annual turnover of less than GBP1 million)</li> </ul>	<ul style="list-style-type: none"> <li>- Individuals</li> <li>- Small businesses (with less than 15 employees, a turnover of less than A\$1 million and independently owned and managed)</li> </ul>	N/A
<b>Maximum compensation</b>	Up to GBP100,000	Up to A\$150,000	N/A
<b>Types of complaints the ombudsman handles</b>	Complaints about: <ul style="list-style-type: none"> <li>- banking services;</li> <li>- credit card services;</li> <li>- executor and trustee services; and</li> <li>- advice and services relating to taxation, insurance and certain investments.</li> </ul>	Complaints: <ul style="list-style-type: none"> <li>- about a specific banking service that the bank has provided to the customer;</li> <li>- relating to the bank's actions having directly caused the customer to suffer a financial loss.</li> </ul>	N/A

	<b>UK<sup>37</sup></b>	<b>Australia</b>	<b>Hong Kong</b>
<b>Types of complaints the ombudsman does not handle</b>	<p>Complaints:</p> <ul style="list-style-type: none"> <li>- about bank's general interest rate policies;</li> <li>- about general bank policies and practices;</li> <li>- where the claim could involve more than GBP100,000; or</li> <li>- where the claim has already been dealt with by a court or other independent body.</li> </ul> <p>Unless there has been mal-administration or unfair treatment, the Ombudsman cannot deal with complaints about a bank's commercial judgement relating to lending or security</p>	<p>Complaints:</p> <ul style="list-style-type: none"> <li>- that relate to a bank's commercial judgement in decisions about lending or security (unless maladministration in lending matters is involved);</li> <li>- that relate to a bank's general interest rate policies;</li> <li>- that ombudsman believes should be more appropriately dealt with by court or another independent conciliation or arbitration procedure;</li> <li>- where the amount to be claimed exceeds A\$150,000</li> </ul>	N/A
<b>Criteria for the ombudsman's consideration</b>	What is fair and reasonable in all the circumstances of the case, and taking into account the relevant law, regulations, relevant codes of practice and, where appropriate, what the Ombudsman considers to be good industry practice	What is fair in all the circumstances, any applicable rule of law or relevant judicial authority, general principles of good banking practice and any relevant code of practice applicable to the subject matter of the complaint	N/A
<b>Compliance with decision of the ombudsman</b>	Banks have to accept the Ombudsman's decisions, but complainants do not and retain the right to go to Court instead.	Ombudsman's decision is binding on a bank only if the applicant accepts the decision. Applicants can reject the Ombudsman's decision and proceed with other remedies.	N/A
<b>Charge for service</b>	Free.	Free for non-business applicants. For business applicants, an initial consideration of the merits of their case is free; thereafter a fee is payable on a cost sharing basis	N/A
<b>Funding of the ombudsman scheme</b>	Funded by members	Funded by member banks	N/A

## 6 Accessibility to Basic Banking Services

### ***Basic Bank Account in the UK***

- 6.1 The introduction of the "basic bank account" in the UK is part of an overall plan to promote financial inclusion (and thus the wider government policy of social inclusion). These accounts help to attract people who may have been "kept out" or "opted out" of banking services to open accounts. Part of the reason for refraining from opening a bank account is often the high charges associated with inadvertent overdraft and the lack of creditworthiness. As such, basic bank accounts simply provide money transmission services with no access to credit (thus eliminating the need for credit history) so there is no danger of running up debts and incurring charges which people on low income fear.
- 6.2 As a solution to tackle the problem of financial exclusion of the poor, the Office of Fair Trading recommended that "banks offer a basic, on-line, low cost current account on which it is not possible to incur high charges for unauthorised credit." High street banks were expected by the Secretary for Trade and Industry to provide basic accounts by October 2000. By now, all the major high street banks provide these accounts, and most of them do not charge fees.
- 6.3 In line with the specification of the Treasury's Policy Action Team, the Banking Code defines the features of a basic bank account as follows:
- *income can be paid by employers directly into the account;*
  - *benefits can be paid by the Government directly into the account;*
  - *cheques and cash can be paid into the account;*
  - *bills can be paid by direct debit, by transferring money to another account or by a payment to a linked account;*

- *cash can be withdrawn at cash machines;*
- *there is no overdraft; and*
- *the last penny in the account can be withdrawn.*

6.4 Though basic accounts are now covered in the UK Banking Code, there is no obligation for subscribers to the Code to offer such accounts. Also, there is no detail about monthly or other account keeping fees or how many transactions are allowed per charging period without incurring additional fees. It is also not clear if a minimum deposit or balance requirement will apply. But if a bank does offer basic accounts it must give customers information on its basic accounts if the bank thinks the customer might be interested in such an account. Basic accounts are not exclusive to certain members of the society and there are no criteria to be met for opening one.

6.5 In the UK, there is no financial product regulation except in the area of collective investment schemes. In addition, there is no formal regulation of banks' fees and charges. The Cruickshank report recommended, and the Government agreed, that the supply of personal banking services should not be designated as regulated activities under the provisions of the Financial Services and Markets Act (FSMA). However, clear criteria should be laid down for deciding whether the FSA should have responsibility for regulating banking products. The evaluation required is:

- establishing the extent and scale of consumer detriment;
- determining whether regulation could reduce that detriment; and
- assessing whether the cost of regulation would be proportionate to the likely benefit to consumers.

6.6 Although formal product regulation was not called for, the Cruickshank Report recommended that the Government should give top priority to developing a benchmark for basic banking services. The report said the lack of information

on the provision of basic banking services is a particular problem which can be remedied by defining the standard of a basic account. In response to this, the Treasury has proposed for consultation the below CAT standards for basic bank accounts (BBA):

**Charges** - No one-off or regular charges for everyday transactions.  
- No risk of an overdraft.

**Access** - No requirement for initial or regular deposits.  
  
- Account holders must be able to use the following:  
• cash machines;  
• cash and cheque deposits;  
• automated credit transfer;  
• direct debit, standing order, or budget accounts.

**Terms** - All advertising and paperwork must be straightforward, fair and clear.  
- Account holders must be given regular statements, and at least six months notice if the bank can no longer offer a BBA on CAT standard terms.  
- Ability to withdraw all funds.

6.7 CAT standards define Government standards to help consumers identify products which have reasonable charges, easy access, and fair terms. The CAT standards can help consumers choose products on an informed basis that best suit their needs and thereby improve access to banking services by all groups in the community. CAT standards are voluntary and do not carry a Government endorsement or guarantee. Banks may advertise a BBA as CAT standard if it meets or exceeds them. CAT standards already exist for other products, for example, cash individual savings accounts, the standards for

which include: “interest must not be less than 2% points less than base rate, and there must be no one-off or regular charges of any kind, e.g. no charge for withdrawals or any regular service (such as use of ATMs)”. Though there is no formal regulation on fees and charges, CAT standards which set the benchmark on charges at “no one-off or regular charges for everyday transactions” seem to implicitly impose a price restriction on those that choose to offer them.

6.8 In addition to the development of basic bank accounts, the way forward also lies in developing new and alternative means to deliver and provide access to financial services. Other ways of providing a basic bank account or banking services include a "budget account"<sup>38</sup>; a joint effort between some banks and the Post Office to set up a "Universal Bank" based on the post office network of 18,000 branches<sup>39</sup>; and a scheme based on the LINK and SWITCH networks to provide benefit recipients with access to money transmission facilities. The Government has also decided to move progressively to make benefit payments through automated credit transfer (ACT) from 2003 to 2005. This is expected to increase the demand for basic accounts for those benefit recipients who currently do not have one. At the same time, options are being explored for how to take care of those recipients who do not wish to have a bank account or receive their benefits by ACT.

6.9 As a general principle, the Government does not want to have to legislate to compel banks to serve all sections of the community. However, if voluntary action is unproductive and monitoring shows insufficient progress, it may be necessary to consider other options.

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<sup>38</sup> A "budget" account allows a customer to make a fixed, single monthly payment into an account from which the bank will pay all agreed recurring bills throughout the year, thus smoothing payment peaks and troughs.

<sup>39</sup> In December 2000, the UK Government announced that a number of major banks have agreed to the Universal Bank proposal. Universal banking services have two elements. First, banks will make their basic accounts accessible at post offices. Second, a "Post Office based account" for payment of benefits will be made available for customers who are unable or unwilling to open even a basic bank account. Both the banks' basic accounts and the Post Office based accounts will be available at Post Office branches by the end of 2002.

## ***Basic Banking Services in Australia***

- 6.10 According to the Australian Bankers Association (ABA), low-cost accounts already exist for low-income groups, aged, disabled and other pensioners. 75% of customers do not have to pay fees on personal transaction accounts. There are also substantial fee discounts and exemptions to the financially disadvantaged, pensioners, students and the disabled.
- 6.11 The Government has no imperative with regards to provision of basic banking products by banks and there is also no regulation on banks' fees and charges. However, the Australian Consumers' Association argues that banking ought to be recognised as an essential service<sup>40</sup> and for the adoption of a regulatory framework which recognises and enforces that principle.
- 6.12 There is no reference in the Code, like that in the UK Code, to a basic bank account. However, there is pressure from consumer advocates to protect low income and disadvantaged consumers and ensure they have access to banking services. The ABA has recently responded to public demand and proposes that the ten ABA member retail banks will provide "safety net, basic bank accounts" to holders of Commonwealth Government health concession cards. The benchmark features of such accounts are as follows:
- no account keeping fees;
  - six free non-deposit transactions per month including up to three free over-the-counter withdrawals per month;
  - no minimum monthly balance required; and
  - unlimited free deposits.
- 6.13 The ABA also proposes that the initiative be incorporated in the revised Code of Banking Practice, along with two other initiatives to (a) improve

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<sup>40</sup> There is a statutory right to a bank account in France.

accessibility to electronic banking services for older people and people with disabilities; and (b) improve face-to-face banking services to rural Australians after bank branch closure.

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### ***Basic Banking Services for vulnerable customers in Hong Kong***

6.14 Following the announcement by some banks of plans to increase their fees and charges on low balance accounts, there has been significant public concern regarding the disproportionate impact such adjustments may have on the more vulnerable members of the community, and consumer advocates have called for banks to provide basic banking services to these groups of customers.

6.15 At present, the problem of exclusion of low-income customers from banking services does not appear to be a major problem in Hong Kong, as reflected by the fact that a number of banks remain happy to provide banking services to small depositors and the banks generally grant exemptions to disadvantaged groups such as the elderly and the disabled. The Government believes that the level of fees and charges is best determined by competitive forces, which should help to keep them at a reasonable level. The aim, therefore, is to help ensure that the competitive mechanism remains effective in Hong Kong, while at the same time strengthening the provisions of the Code of Banking Practice to enhance the transparency of banking services in order to allow consumers to make informed decisions and choose banking services that best suit their needs.

6.16 In light of the above, the HKMA does not regard the regulation of banks' fees and charges as a means of addressing concerns in this regard. Nevertheless, developments need to be monitored closely, and appropriate remedial measures considered if necessary. For example, if the market process produced a situation whereby certain vulnerable members of society were excluded from

access to basic banking services, the Government would have to consider options for how the provision of basic banking services at a reasonable cost can be ensured.

- 6.17 In the meantime, the Government has recommended banks to give sympathetic consideration to the elderly and vulnerable/disadvantaged groups when adjusting fees and charges, e.g. by granting exemptions to such members.
- 6.18 There is no provision in the Code relating to accounts for low income or disadvantaged members of the community. There have been suggestions from the community and consumer groups that a basic account suited to the needs of the vulnerable or disadvantaged members of the community should be introduced. Recent announcements by banks indicate that such a basic banking service is likely to continue to be available free of charge provided the customer makes use of alternative delivery channels (i.e. other than bank counters). The need for introduction of a basic banking product may therefore be addressed by the market, although this needs to be kept in view.
- 6.19 Table 6 is a summary table which compares the provision of basic banking service between Hong Kong and the two jurisdictions under study.

**Table 6: Provision of Basic Banking Service in UK, Australia and HK**

	<b>UK</b>	<b>Australia</b>	<b>Hong Kong</b>
<b>Product regulation of banking services</b>	No	No	No
<b>Regulation on banks' fees and charges</b>	No	No	No
<b>Description of basic bank account (BBA) in industry code of practice</b>	<p>Features:</p> <ul style="list-style-type: none"> <li>- income can be paid by employers directly into the account;</li> <li>- benefits can be paid by the Government directly into the account;</li> <li>- cheques and cash can be paid into the account;</li> <li>- bills can be paid by direct debit, by transferring money to another account or by a payment to a linked account;</li> <li>- cash can be withdrawn at cash machines;</li> <li>- there is no overdraft; and</li> <li>- the last penny in the account can be withdrawn.</li> </ul>	<p>Benchmark features of safety net, basic bank account proposed to be incorporated in the COBP under the current review:</p> <ul style="list-style-type: none"> <li>- no account keeping fees;</li> <li>- six free non-deposit transactions per month including up to three free over-the-counter withdrawals per month;</li> <li>- no minimum monthly balance required; and</li> <li>- unlimited free deposits.</li> </ul>	Nil <sup>41</sup>
<b>Eligibility for BBA</b>	Not specified.	Holders of Commonwealth Government health concession cards	N/A

<sup>41</sup> Recent announcements by banks indicate that basic banking service is likely to continue to be available free of charge provided the customer makes use of alternative delivery channels (i.e. other than bank counters).

	<b>UK</b>	<b>Australia</b>	<b>Hong Kong</b>
<b>Official benchmarks for BBA</b>	<p>CAT standards for BBA:</p> <p><b>Charges</b></p> <ul style="list-style-type: none"> <li>- No one-off or regular charges for everyday transactions.</li> <li>- No risk of an overdraft.</li> </ul> <p><b>Access</b></p> <ul style="list-style-type: none"> <li>- No requirement for initial or regular deposits.</li> <li>- Account holders must be able to use the following: <ul style="list-style-type: none"> <li>• cash machines;</li> <li>• cash and cheque deposits;</li> <li>• automated credit transfer;</li> <li>• direct debit, standing order, or budget accounts.</li> </ul> </li> </ul> <p><b>Terms</b></p> <ul style="list-style-type: none"> <li>- All advertising and paperwork must be straightforward, fair and clear.</li> <li>- Account holders must be given regular statements, and at least six months notice if the bank can longer offer a BBA on CAT standard terms.</li> <li>- Ability to withdraw all funds.</li> </ul>	Nil	Nil
<b>Basic banking service via postal office or rural transaction centres</b>	Some banks and the Post Office have agreed to set up a "Universal Bank" based on the post office network. By the end of 2002, banks will make their basic accounts accessible at post offices and a "Post Office based account" will also be made available for customers who are unable or unwilling to open even a basic bank account.	The Federal Government provides banking services at Rural Transaction Centres.	Nil



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