

For information  
on 26 February 2002

## LegCo Panel on Financial Affairs

### Consumer Protection in the Banking Sector<sup>1</sup>

#### I. Purpose

This paper focuses on the role of the Hong Kong Monetary Authority (HKMA) in relation to consumer protection and on the initiatives which the HKMA and the industry have taken in the past year on this issue. As requested by the Clerk to Panel, the paper covers the following specific topics -

- (a) the regulatory framework for prudential supervision and conduct regulation of the banking sector;
- (b) the revised Code of Banking Practice;
- (c) the mechanism for handling complaints from bank customers (including the need for a Banking Ombudsman);
- (d) fees and charges for basic banking services;
- (e) consumer consultation on banking-related legislation and policies;
- (f) consumer education on banking-related matters; and
- (g) access to credit reference agencies.

2. The question of protection of bank depositors is dealt with in a separate paper on Progress on the Deposit Insurance Scheme (DIS).

#### II. Background

3. The HKMA has become increasingly involved in consumer protection in the area of banking services. For example, it has devoted considerable energy to helping develop the Code of Banking Practice and to dealing with complaints by bank customers. This increased involvement is, it would appear, desirable in the light of the changes taking place in the banking market, such as the imposition of new fees and charges, and is in line with public expectations that the authority responsible for supervising banks should take an active role in relation to the concerns of the public as regards banks' business practices and general conduct.

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<sup>1</sup> The HKMA has supervisory powers over institutions authorized under the Banking Ordinance, which include licensed banks, restricted licence banks and deposit-taking companies. In this paper, these authorized institutions are generally referred to as banks for drafting purposes.

4. In April 2001, the HKMA presented to the LegCo Panel on Financial Affairs a Comparative Study of the extent and nature of banking consumer protection and competition arrangements in the UK, Australia and Hong Kong, as a first step in the consideration of whether the HKMA might play a more explicit role in consumer protection. This was followed up in June 2001 by a speech to the banking industry by the HKMA's Chief Executive urging that more attention be paid to the question of consumer protection in the area of banking services.

5. The Comparative Study identified 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. Other than the fact that the Monetary Authority (MA) does not have an explicit mandate in relation to consumer protection, two particular areas of difference were highlighted: first, the setting, monitoring, and enforcement of standards of business practice; and, second, the investigation, resolution, and arbitration of customer complaints.

6. The HKMA raised the following issues for consideration in the Comparative Study:

- (a) whether the HKMA should be given an explicit statutory responsibility for consumer protection;
- (b) how monitoring and enforcement of the Code of Banking Practice might be enhanced, and whether the Code should be given some form of statutory backing;
- (c) what sanctions should be made available if the Code is breached;
- (d) whether the HKMA should set out industry standards for banks' internal complaint handling procedures; and
- (e) whether there was a need for a Banking Ombudsman scheme in Hong Kong.

7. The Administration and the HKMA have since received feedback from a number of parties. These include the Consumer Council, the Democratic Party and the Hong Kong Association of Banks (HKAB). A summary of the feedback received is at Annex A. Separately, the Legislative Council has also conducted studies on this subject matter.

### **III. Regulatory Framework for Prudential Supervision and Conduct Regulation of the Banking Sector**

8. The Banking Ordinance states in section 7 that “the principal function of the MA under this Ordinance shall be to promote the general stability and effective working of the banking system.” This means that the MA’s principal concern should be to ensure that individual banks are financially sound and prudently managed. The aim is to reduce the risk of bank failure, which could result in depositors losing money and threaten the stability of the banking system as a whole. We concentrate therefore on checking that the banks have adequate capital and liquidity and effective management and internal controls<sup>2</sup>.

9. Section 7 of the Banking Ordinance goes on to say, among other things, that the MA’s functions include:

- (a) taking reasonable steps to ensure that banks operate in a “responsible, honest and business-like manner”;
- (b) promoting and encouraging “proper standards of conduct and sound and prudent business practices” among banks; and
- (c) suppressing “illegal, dishonourable or improper practices” by banks.

10. These specific functions are related to the MA’s general function of promoting the stability of the banking sector. Clearly, if banks are involved in illegal or improper activities (such as bribery, corruption, fraud or money laundering), this may threaten the reputation not only of the bank concerned but also of the banking system as a whole. This in turn may lead to a loss of confidence in the banks.

11. More difficult questions arise, however, in the area of “consumer issues”, in other words issues relating to the cost and quality of banking services. Oversight of such matters is not generally seen as being part of the responsibilities of banking regulators and the Banking Ordinance contains no reference to “consumer protection” as a function of the MA or to the concepts of “fairness” and “transparency”. On the other hand, it is difficult to say that such issues should be ignored by regulators. If banks provide a bad or unfair service, this may damage their reputation and damage customer loyalty and confidence. It may also indicate weaknesses in management and internal

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<sup>2</sup> The Banking Ordinance contains specific provisions relating to these areas.

controls, and expose the bank to financial loss, e.g. as a result of “misselling” of investment products.

12. As a banking regulator, therefore, the HKMA does have an interest in encouraging standards of good banking practice whereby banks act fairly and reasonably in relation to their customers. But the HKMA also has to determine where to draw the line, and in particular we need to be careful about intervening in matters which are best dealt with through competitive market forces or resolved through the courts.

13. In keeping with this philosophy, the HKMA has actively expanded its role in relation to consumer issues in recent years in response to perceived public expectation despite the fact that it has no explicit mandate in this area. A specific responsibility for consumer protection (and enforcement powers to back it up, such as the ability to “name and shame” non-compliant banks) would make the HKMA’s position more clear-cut. If there were a consensus that the HKMA should be given this responsibility, we would be prepared to take it on. But there does not appear to be a need for a more elaborate regulatory framework at present (with the resource implications this would have).

14. The guiding principle adopted by the HKMA is that we encourage banks to treat their customers in a fair and transparent manner. In particular, we consider that -

- (a) banks should provide their customers with readily available, clear and up-to-date information about the costs of banking services;
- (b) banks should highlight the financial consequences of certain actions by customers, for example if they overdraw their accounts. This should not simply be “buried” in the terms and conditions; and
- (c) banks should have a procedure in place for fully investigating all complaints by customers and should be prepared to make restitution or pay compensation to the customer where the bank is clearly in the wrong (for example, because it wrongly charged the customer).

15. These and other good banking practices to promote a fair and transparent relationship between banks and their customers are now embodied in the Code of Banking Practice (the Code) issued by the two industry Associations. The HKMA has played a pro-active role in bringing the Code into being and fully endorses the recommended practices in the Code. The

HKMA also plays a role in monitoring compliance with the Code, reflecting its concern for consumer protection. Details of the latest revisions to the Code are set out in the following section.

#### **IV. The Revised Code of Banking Practice**

16. The Code of Banking Practice (the Code) was first issued in 1997 jointly by HKAB and the Deposit Taking Companies Association (DTCA), and endorsed by the HKMA. The Code aims to promote good banking practices and a fair and transparent relationship between banks and their personal customers.

##### *Review of the Code and major improvements made*

17. The Code was subject to a comprehensive review in 2001. The objective of the review was to strengthen the provisions of the Code in the light of experience since it was introduced three years previously and to keep it up to date with latest developments in the banking industry. The revised Code was issued and became effective in December 2001.

18. In the revised Code, provisions have been strengthened to further increase the transparency of banking services and to afford customers broader and more specific protection. The following highlights some of the main improvements (see Annex B for details) -

- (a) more transparent and consumer-friendly terms and conditions;
- (b) more effective notification of changes to fees and charges;
- (c) more transparent and wider application of annualised percentage rates on consumer credit products;
- (d) cardholders' maximum liability for card loss limited to HK\$500 and liability for subsidiary cardholders limited to their own debts;
- (e) improved safeguards in the area of debt collection practices;
- (f) debt recovery expenses subject to "reasonableness" test;
- (g) time period for release of mortgage deeds set at 21 days; and
- (h) new provisions in relation to e-banking services and stored value cards.

19. Through the joint efforts of the industry and the HKMA, the newly revised Code will help to enhance consumer rights. By increasing the overall level of transparency of banking services and products, consumers will be able to make their choices on a more informed basis.

*Monitoring and enforcement of the Code*

20. With respect to enforcement of the Code, the HKMA has undertaken to monitor compliance as part of its regular supervision. To step up these efforts, a new self-assessment framework has been introduced and banks will be required to provide an annual assessment report to the HKMA starting in September 2002. In addition, the HKMA will continue to monitor compliance with the Code during on-site examinations. Customer complaints received by the HKMA may also reflect non-compliance with the Code. In such cases, the HKMA will follow up with the bank concerned to ensure that remedial action is taken.

21. The HKMA expects banks to rectify any non-compliance when it is brought to their attention. Moreover, if a bank were to blatantly disregard the provisions of the Code, the HKMA would assess whether the business of the institution was being conducted with integrity, prudence and the appropriate degree of professional competence, which is one of the criteria for continued authorization. Clearly, the removal of authorization in respect of a consumer-related issue would be a drastic and probably unjustifiably disproportionate measure. Nevertheless, it provides a “last resort” mechanism on which the HKMA may rely to back up its use of moral suasion.

22. The HKMA’s experience has shown that moral suasion has been adequate in enforcing compliance with the Code. In general, once informed of a possible breach, the banks concerned will promptly take remedial action. It does not appear, therefore, that non-compliance with the Code, once an actual or potential breach has been identified, is a major problem. Additionally, the introduction of the proposed self-assessment regime should enhance compliance. It is accepted, however, that the possible need for further enforcement powers to ensure compliance should be kept under review. Such powers might, for example, include a specific power to “name and shame” banks that breached the Code.

*Enhanced role of the industry Associations*

23. Following a review of the future role of HKAB conducted last year, HKAB has determined to take on a more proactive role in the future development of the Code. In this connection, a Code of Banking Practice Committee (the CoBP Committee) has recently been established jointly by HKAB and DTCA, on which the HKMA is represented. The main responsibilities of the CoBP Committee include providing guidance on interpreting the Code and undertaking future review of the Code. Although the CoBP Committee will neither deal with customer complaints nor enforce compliance with the Code, its proactive approach in providing guidance to

banks on interpreting the Code should help improve compliance by specifying how provisions of the Code should be implemented in practice. It also provides a regular forum for the industry and the HKMA to address and respond to any Code-related issues more promptly. Additionally, feedback received by the CoBP Committee should contribute to the future review and improvement of the Code.

24. As an example of how the CoBP Committee can play an important role, it has recently reviewed the practice of the banks in determining the exchange rates used in relation to overseas credit card transactions. At a recent meeting, the CoBP Committee agreed to make a recommendation to the industry Associations that banks should disclose the margin they charge over the exchange rates charged by the credit card network operators on overseas credit card transactions. This is in keeping with the general principle in the Code that credit card issuers should make readily available to cardholders general descriptive information on the use of cards. The industry Associations have accepted the recommendation of the CoBP Committee and have issued a notice to their members requesting them to comply.

25. The question has been raised on whether the Code should be given some form of statutory backing and whether sanctions should be introduced to ensure its effectiveness. At this stage, the HKMA believes that the voluntary Code remains a viable alternative to legislation. The Code provides benchmarks for good banking practice with which banks are expected to comply. Given that business practices are of an evolving nature, a prescriptive statutory approach would render the Code inflexible, and thus less effective. Many principles of the Code are intentionally general and broad and could not easily be adapted into legislation. Moreover, overseas experience shows that such industry codes are generally preferred to legislation. For example, in the UK and Australia, the corresponding banking code remains a voluntary industry code without statutory effect. A statutory code would also increase the regulatory costs both to the banks and the regulator, which is undesirable, particularly in the prevailing economic environment.

26. The above-mentioned improvements made to the Code and also the mechanism to review and develop it should help to enhance protection for bank customers. The initiative by the industry to take more proactive ownership of the Code is a step forward to demonstrate the industry's commitment to self-regulation of market conduct. Non-compliance with the Code is not presently considered a major issue, given the monitoring role of the HKMA and the responsive manner of banks in taking remedial action. In view of the above, it seems that statutory backing and sanctions for non-compliance may not be required, at least for the time being.

## V. The Mechanism for Handling Customer Complaints

### *The role of the HKMA*

27. Given its objective of promoting and encouraging proper standards of conduct and business practices, the HKMA has a strong interest in ensuring that customer complaints are properly handled by the banks and that its own role in relation to complaints is also effective. Equally, however, the HKMA must be careful not to promise more than it can actually deliver, e.g. in terms of its ability to arbitrate in customer disputes or to force banks to concede that they are in the wrong or to pay compensation to customers. The HKMA's principal concern is thus with the process by which banks investigate and deal with customer complaints, including particularly that such complaints are fully investigated and given a fair hearing. In addition, the HKMA has to satisfy itself that the policy and procedures of the bank concerned in relation to the subject matter of the complaint are in line with the HKMA's relevant supervisory guidelines or market practices, including those which are laid down in the Code. While the HKMA does not generally arbitrate in customer disputes, if there is evidence that the bank has acted in a manner that is improper or clearly unfair to the customer, the HKMA will make its views known to the bank and expect it to rectify the situation.

28. Upon receiving a customer complaint, the HKMA will refer it to the bank concerned for thorough investigation and notify the complainant that it has done so. The HKMA will ask the bank to submit an investigation report, together with copies of any correspondence with the complainant, to the HKMA as soon as possible, but not later than 30 days after the request from the HKMA. Other documentary evidence to show that the complaint has been properly addressed by the bank may also be required. If the HKMA is not satisfied with the response the bank has given the customer, it will pursue the matter with the senior management of the bank and ask them to reconsider their response. If the HKMA is satisfied with the bank's reply to the complainant, it will issue a response to the complainant notifying him of that fact. If the complainant is still not satisfied, it is open to him to write again to the HKMA (or, for that matter, to other parties such as the Legislative Council, the Consumer Council, and the media). If the complainant raises additional arguments which warrant reopening the case with the bank, the HKMA will do this.

29. A further aspect is that a customer complaint may raise doubts about the bank's operating procedures or about the integrity or prudence of its business practices. In this case, we would consider whether it was necessary to

take supervisory action against the bank to ensure that it was meeting the prudential standards expected of banks under the Banking Ordinance.

*Statistics for complaints received by the HKMA*

30. The HKMA received a total of 1,498 complaints in the past two years (see Annex C). The number increased by 42% to 880 in 2001 from 618 in 2000. Such an increase is unsurprising given the general deterioration in the economic environment and the increasing shift by the banks into consumer finance business, as reflected in the sharp rise in the number of credit card accounts. Despite the fact that the HKMA does not generally arbitrate in customer disputes, the majority of the cases were resolved satisfactorily by the banks concerned upon referral from the HKMA. In 2001, about 9% of complainants sought further assistance from the HKMA after receiving the response from the bank concerned. Such “second complaints” typically involve contractual disputes, loss on investments, disagreements about bank policies or procedures, or disputes which are difficult to substantiate due to a lack of evidence.

31. More than half of the complaints were received through the Debt Collection Hotline set up by the HKMA and some of the general complaints were also related to debt recovery practice. The regulation of debt collection activities is being considered by the Sub-committee on Debt Collection established by the Law Reform Commission. If it is ultimately decided that legislation will be introduced to regulate such activities, most of the debt collection complaints currently handled by the HKMA are likely to be diverted to the relevant regulator, though the HKMA would continue to have an interest in any malpractice on the part of banks from the prudential supervision angle. In that case, the number of complaints handled by the HKMA would be significantly reduced.

32. If broken down by product type, more than one-fifth of the general complaints<sup>3</sup> were in connection with credit card services. These grew by over 50% in 2001, reflecting the increase in the number of cards and growing debt repayment problems. The main areas of complaint include (i) debt recovery actions and the related high level of fees, costs and interest; (ii) liability arising from unauthorised transactions; (iii) liability between principal and subsidiary cardholders; and (iv) lax control in the issue of credit cards and setting credit limits. A number of these areas were addressed as part of the review of the Code, and new provisions were issued in January of 2001 in advance of the

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<sup>3</sup> General complaints exclude those received through the debt collection hotline (although some of them may also relate to debt collection).

release of the revised Code. Moreover, the HKMA is looking closely at the policies of banks as regards the issuing of credit cards, as a separate effort to help address perceived problems with credit card issuance. It is hoped that these initiatives will help to deal with many of the credit card-related complaints.

#### *HKMA guideline on complaint handling procedures*

33. As noted above, the HKMA believes that it is important that banks have systems in place to ensure that customer complaints are fully and promptly investigated and resolved in a satisfactory manner. The HKMA has therefore prepared a guideline on banks' complaint handling procedures (Annex D), which will be issued shortly. This sets out the HKMA's recommendations on the key elements of an effective system for handling customer complaints.

34. The guideline recommends that banks should have in place complaint handling procedures which provide an efficient and fair mechanism for resolving customer complaints and should ensure that these are operated effectively. They should also provide adequate resources within the institution and training to staff to investigate and resolve complaints. Banks should set out their complaint policy and procedures in writing to demonstrate their commitment to dealing with complaints. They should ensure that the complaint mechanism is readily available and easily accessible to customers, informing customers where and how to complain and allowing them to do so with ease. In particular, banks are required to make available their complaint handling procedures in each branch or sales office. The guideline goes on to specify that banks should be prepared to offer redress to customers if appropriate. It also lays down time limits for banks to acknowledge and respond to complaints. Furthermore, banks should keep records of complaints which may be subject to inspection by the HKMA.

#### *The need for a Banking Ombudsman*

35. A Banking Ombudsman scheme would, on the face of it, provide a more flexible and, from the consumer perspective, lower-cost alternative to legal action should banks and their customers fail to agree on a resolution to a complaint. It might also help, albeit indirectly, to improve the quality of banking services since banks would be aware that customers had an alternative avenue for pursuing complaints (and perhaps also obtaining compensation) in the event of poor service.

36. On the other hand, it cannot be automatically assumed that the arrangements in countries such as the UK and Australia would be appropriate

in the context of Hong Kong. As noted in the recent report by a LegCo delegation (the Delegation Report)<sup>4</sup>, “the financial system in Hong Kong is different from those in the UK and the US; the redress system should therefore be congruent with the circumstances in Hong Kong rather than a copy of the systems from other jurisdictions”. The Delegation Report went on to conclude that, among other things, “it is pre-mature to suggest if a neutral body similar to the single Ombudsman system in the UK is needed in Hong Kong.”

37. This points to the fact that the issue of the cost of an Ombudsman scheme would need careful consideration. To be effective, the Ombudsman would need sufficient staff with the necessary skill and resources to investigate customer complaints. From the HKMA’s experience, this can be a time-consuming business. The banking industry is concerned that the establishment of the Ombudsman scheme would add an extra layer of costs to the operation of banks in what is already a difficult operating environment. The Delegation Report noted that this “might cut into the competitiveness of Hong Kong as an international financial centre.”

38. In addition, an Ombudsman scheme is subject to its own limitations and may not be able to resolve all types of problems arising from customer complaints. The Banking Ombudsmen in Australia and the UK do not generally deal with complaints where customers do not suffer a financial loss. The UK Ombudsman may also dismiss a complaint if he is satisfied that the complaint relates to the legitimate exercise of a bank’s commercial judgement, or investment performance, or would be more suitably dealt with by the courts. According to the experience of the HKMA, it is likely that a significant number of the “second complaints” that we currently handle, i.e. those that could not be resolved by simply referring the complaints to the banks concerned, would fall outside the scope of an Ombudsman scheme, e.g. because they relate to commercial decisions of the bank.

39. The banking industry is of the view that existing arrangements for dealing with customer complaints are generally effective. Banks are responsive to customer complaints. Additionally, the issue of the guideline by the HKMA on complaint handling procedures and its involvement in handling customer complaints should help to resolve customer disputes satisfactorily, at least in the majority of cases. Furthermore, there are already a number of external channels through which customers can lodge complaints against banks<sup>5</sup>.

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<sup>4</sup> *“Report on the Financial Systems in the United Kingdom and the United States of America based on the findings of the overseas duty visit paid by the delegation of the Financial Affairs Panel and the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 in April 2001”* vide LC Paper No. CB(3) 866/00-01.

<sup>5</sup> Such as the Legislative Council, the Consumer Council, and the media.

40. In light of the above, it is not clear that the extra cost involved in the setting up of an Ombudsman scheme would be justified. On balance, we are of the view that there are insufficient policy justifications for setting up a Banking Ombudsman scheme at this stage. We will nevertheless monitor the situation closely, taking into account developments such as the state of compliance with the Code, the effectiveness of the CoBP Committee and trends in customer complaints.

## **VI. Fees and Charges for Basic Banking Services**

### *The position of the HKMA*

41. Although the HKMA believes it has a role to play in relation to consumer protection, it does not believe that this can, or should, extend to the regulation of fees and charges on banking services. Rather, its focus has been on trying to promote competition in the banking system, such as through the deregulation of interest rates and reductions in barriers to entry. In addition, through its sponsorship of the Code, the HKMA has promoted greater transparency in the setting of fees and charges. In particular, the revised version of the Code requires banks to inform customers at least 30 days before they revise their fees and charges.

### *The position in other jurisdictions*

42. This approach seems to be broadly consistent with that in a number of other financial centres, although the overall framework for consumer protection in such places may be more formalised. In particular, the recent Report prepared by the Research and Library Division of the LegCo Secretariat<sup>6</sup> (the LegCo Secretariat Report) makes it clear that in both the US and the UK there is no statutory regulation of banks' fees and charges, and the main focus of the authorities has been on fostering a competitive environment and on transparency in the fee-setting process. In both countries, the banks are free to impose fees and charges on basic banking services though it appears that in the UK (but not in the US), competition has resulted in most banks no longer charging for the general operation of a bank account.

### *The impact of deregulation*

43. The LegCo Secretariat Report does not identify any direct connection between the deregulation of interest rates for deposits and the

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<sup>6</sup> "Protection for Banking Consumers in the UK and the US: Fees and Charges".

levying of charges by banks in the UK and the US. Prior to deregulation, banks in both countries already imposed fees and charges for the running of deposit accounts. By contrast, the final phase of deregulation of interest rate in Hong Kong in mid-2001 was accompanied by the imposition by a number of banks of new fees and charges on deposit accounts.

44. However, although deregulation may have been the catalyst for this shift in charging policy in Hong Kong, there is strong evidence to suggest that it was not the underlying cause. The more fundamental reason seems to be deterioration in the economics of the banking industry caused by lower interest rates, lack of loan demand, surplus liquidity and declining interest margins. The latter has been most evident in the market for residential mortgage loans where the margin below prime has fallen to 2.5% or more. A further influence on charging policy has been the desire of banks to diversify their sources of income away from net interest income, which still accounts for 70% or more of the total income of most banks (compared with less than 60% in the US – see paragraph 29.2 of the Report).

45. The net interest margin of the local banks declined from 2.17% to 2.12% in the third quarter of 2001, following deregulation. However, this was the continuation of a longer-term declining trend and does not seem to be specifically associated with the deregulation. Indeed, closer analysis of the figures shows that a declining cost of funds helped to improve the net interest margin in the third quarter. However, this was more than offset by the lower return that the banks received on investment of their free funds caused by the fall in the general level of interest rates (the so-called “endowment effect”). Thus, there is no evidence that deregulation has in the short term contributed to the decline in banks’ margins.

#### *Access to basic banking services*

46. This does not, however, remove the concern that increased fees and charges could effectively exclude certain members of the community, particularly those in lower income groups, from access to banking services because of the higher cost. It is this concern which has led to Government initiatives in a number of countries (including the UK and the US as detailed in the LegCo Secretariat Report) to encourage banks to develop and promote low cost basic account services<sup>7</sup>.

47. This raises the question of whether a similar initiative is desirable in Hong Kong. It appears however that this would be premature for the following reasons -

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<sup>7</sup> It should be noted that such accounts are not necessarily free.

- (a) there has not been uniformity among Hong Kong banks in their approach towards charging for the operation of deposit accounts. Some have not imposed charges, initially at least. Moreover, those who have imposed charges have generally been sympathetic towards disadvantaged groups by granting them exemptions from the charges. In some cases, it may be possible for customers in general to avoid charges provided they access banking services through lower cost channels such as ATMs or the internet. Some banks have provided more user friendly interfaces to facilitate the usage of such channels. It appears therefore that consumers in Hong Kong have a range of choices;
- (b) as the UK experience has shown, competition among banks may be an effective means of driving down the cost of banking services<sup>8</sup>. Despite the fact that there is already diversity of approach among Hong Kong banks as regards charging, the current high level of liquidity in the system means that banks have not been competing aggressively for deposits. When more normal conditions return to the market, competition for deposits is likely to increase (particularly now that interest rates are fully deregulated) and this may have an impact on banks' charging policies; and
- (c) given that the provision of basic banking services involves quite significant costs for the banks or for the Government in subsidising such accounts (see paragraphs 17.9 and 34.11 of the LegCo Secretariat Report), it would be sensible to wait to see if the problem of exclusion from the banking system in Hong Kong becomes serious enough to justify the extra cost. As noted above, the market may address the problem itself without any Government initiative. It should also be noted that the introduction of basic banking services in countries like the UK and the US is only a recent phenomenon and the success of these is still untested. In particular, it would appear that the Electronic Transfer Account in the US has not proved to be popular (see paragraph 34.13 of the LegCo Secretariat Report).

48. Based on the above, it is proposed that the HKMA, in co-operation with the banking industry, should continue its efforts to encourage

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<sup>8</sup> This raises the question of why it was necessary to introduce Basic Bank Accounts in the UK. One reason suggested by the LegCo Secretariat Report (paragraph 17.1) seems to be the concern of inadvertent overdraft and associated high charges which existed on conventional deposit accounts.

transparency in banks' charging policies within a competitive market environment. There does not appear to be a pressing need for any official initiative at this stage to sponsor the provision of new types of basic banking accounts. But the banks should be encouraged to continue to be sympathetic to customers such as the elderly and recipients of social benefits, and to offer alternative low-cost means of accessing banking services.

## **VII. Consumer Consultation on Banking-related Legislation and Policies**

49. The HKMA agrees that widespread public discussion and consultation are fundamental to the success of any policy proposals. It has conducted extensive consultation in the process of formulating policy and will continue to do so in the future. While much of this consultation is naturally directed at the banking industry (particularly on technical supervisory issues such as capital adequacy), a wide range of other parties are also consulted.

50. In particular, on issues which have a bearing on consumers, the HKMA has maintained a close dialogue over the years with the Consumer Council and has included it among the parties from which it has sought views. This process has involved such issues as interest rate deregulation, financial disclosure, deposit insurance and the sharing of consumer credit information. The Council has played a particularly important role in helping to develop the Code of Banking Practice and a number of the issues highlighted by the Council as a matter of consumer concern have featured in both the original and revised versions of the Code. The draft guideline on "Complaint Handling Procedures" attached at Annex D has also benefited from the comments by the Consumer Council.

51. Apart from the Council, the HKMA also seeks the views of a number of other bodies in developing its policies. These include the Banking Advisory and Deposit-taking Advisory Committees, on which there is some non-banker representation (including a former chairman of the Consumer Council). In certain cases, such as deposit insurance, the HKMA has sought a wider spectrum of views by going out to brief District Councils or by appearing on radio programmes and giving press interviews. The soliciting of public opinion is also facilitated by placing consultation papers on the HKMA's website. In the case of deposit insurance, a further step taken was to produce a leaflet summarising the key issues in a user friendly questions-and-answers format. Copies of the leaflet were distributed to all District Offices. Last but not least, the HKMA regularly briefs LegCo Members on policy issues and endeavours to take their views into account.

52. The LegCo Secretariat Report notes (in paragraph 7.10) that the FSA in the UK has established a Financial Services Consumer Panel (FSCP) which provides advice on the interests and concerns of consumers. The FSA must have regard to any representations made to it by the FSCP. This is in keeping with the FSA's explicit mandate to secure "an appropriate degree of protection for consumers." The HKMA agrees that there might be some merit in having a similar mechanism in Hong Kong as its role in consumer protection develops. It would certainly be a desirable development if the HKMA were to be given an explicit statutory responsibility for consumer protection at some stage. At present, however, it appears that there are already quite extensive and adequate mechanisms for seeking the views of consumer interests on policy issues, in particular via the close co-operation with the Consumer Council.

### **VIII. Consumer Education on Banking-related Issues**

53. Unlike the FSA in the UK, the HKMA does not have any statutory responsibility for consumer education. The HKMA does, however, make extensive information available on its website and in publications which is designed to promote public understanding of how the financial system works, including a weekly "Viewpoint" article by the Chief Executive of the HKMA which comments in a non-technical way on financial issues of topical interest. Such efforts reflect the HKMA's understanding that the benefits of policies such as deposit insurance and the sharing of positive credit information need to be explained to the public at large if they are to achieve acceptance.

54. The HKMA also seeks to widen understanding of the monetary and banking system in Hong Kong and the role and functions of the HKMA through annual exhibitions and an education programme to reach out to teachers, students and other community groups. A Resource Centre is also provided within the HKMA to which students and other members of the public have access for research and enquiry purposes.

55. While the HKMA has a role to play in the area of education, it is only one of a number of bodies that can contribute in this area. In particular, the Consumer Council plays a vital role in enabling consumers to make informed choices in selecting financial products and services. The banking industry itself can also help, and in this connection we welcome the recent initiative by the industry to publish a leaflet on financial health. Further efforts by the industry to promote education on the understanding of and use of banking products will also be welcome.

## **IX. Access to Credit Reference Agencies**

56. It is important that banks should be in a position to lend responsibly. This is obviously to the benefit of the banks themselves in terms of controlling defaults. But it can also be regarded as an aspect of consumer protection since responsible lending can help to prevent individual borrowers from incurring too much indebtedness and getting into financial difficulties.

57. The problem of over-indebtedness has been growing in Hong Kong, as shown by the recent sharp increase in personal bankruptcies. The number of bankruptcy orders increased ten-fold from 893 in 1998 to 9,151 in 2001. A particular feature of the Hong Kong situation seems to be the extreme and multiple indebtedness of those who go bankrupt. A recent report shows that, on average, each bankrupt individual in Hong Kong has borrowed from 12 financial institutions and has incurred total indebtedness of 55 times monthly income (compared to 21 months in the US).<sup>9</sup> Furthermore, according to the latest statistics published by Credit Information Services (CIS), a major consumer credit reference agency in Hong Kong, the number of individuals reported to have nine delinquent accounts or more increased by 200% in the second half of 2001 from the same period a year previously.

58. There are a number of measures that need to be taken to deal with these growing problems. The banks themselves have a responsibility to ensure that they lend in a prudent manner and, in particular, do not issue credit cards indiscriminately. From the HKMA's recent examination of the lending policies and procedures of a number of banks, it appears that these are generally satisfactory, though there is scope for improvement in individual cases. In fact, a number of banks have tightened or enhanced their credit controls in the light of growing delinquencies. However, there are limits to what individual banks can do, in the absence of full sharing of consumer credit data, to deal with the problem of multiple indebtedness. If a borrower can convince one bank that he is creditworthy, there is no reason why he cannot convince others and build up indebtedness from a number of banks, all of which are ignorant of the total extent of his borrowing.

59. At present, the sharing of consumer credit data through credit reference agencies is governed by the Code of Practice on Consumer Credit Data issued by the Privacy Commissioner. This largely restricts data sharing to "negative" data about customers, i.e. about defaults on consumer credit. Data relating to applications for credit and enquiries about customers can also be shared among banks, and the Code has recently been revised to allow greater scope for this.

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<sup>9</sup> Report prepared by McKinsey & Co (November 2001).

60. Negative data is certainly useful, but it does not allow a full picture to be built up of the borrower's total indebtedness and of his overall credit history (including the extent to which debt payments have been made on time as well as having gone overdue). In particular, negative data does not help with the situation of a borrower who builds up large amounts of debt and services it on time before suddenly defaulting and going into bankruptcy. There seems to be an increasing number of such cases.

61. Concern on this issue has led the banks to agree amongst themselves that they should share "positive" credit data via a credit reference agency. Such data would include information on the number of facilities held by a customer, the limits and outstanding amounts on such facilities and the overall credit history of the borrower (covering not simply defaults). The precise scope of the information to be shared is still being worked out.

62. Extending the range of information that could be shared would benefit the banks by improving their credit assessment and helping to control the growth in bad debts. However, it should also have benefits for consumers. First, it should help to mitigate the problem of over-indebtedness by some borrowers. Second, there is evidence from the academic research and experience in countries such as the US, that sharing of both positive and negative consumer data helps to increase the availability of credit and reduce its cost. In particular, borrowers with a good track record may benefit from differential pricing in their favour. Third, the availability of credit information should facilitate new entrants into the credit market and increase healthy competition. Finally, a sound basis for the granting of credit in Hong Kong should encourage foreign banks to increase, or at least maintain, their investment in retail banking here, thus helping to preserve employment. In the latter context, it should be noted that a possible response by the banks to the current situation would be to cut back on the availability of credit, e.g. by reducing lending. There is already some evidence of this. While some additional caution may be justified, there is a danger that this may be carried too far. Over-aggressive tightening by the banks could lead to shrinkage in the financial services industry and could affect consumer spending, thus dampening the prospects for economic recovery. Greater scope to share consumer data could help to reduce this risk.

63. It is recognised, however, that there is a need to strike a balance between the need to share consumer data and the need to safeguard data privacy. The HKMA fully appreciates the privacy concerns, but we do not believe that these should represent an insurmountable obstacle to greater sharing of information among lenders. In other countries, including the UK and the US, sharing of both positive and negative data is permitted subject to

suitable protection for borrowers. There seems no reason why this could not also be done in Hong Kong where a fully-fledged statutory regime to safeguard the privacy of personal data already exists.

64. Implementation of positive data sharing in Hong Kong would require the Privacy Commissioner's approval and amendment to the Code of Practice on Consumer Credit Data. The HKMA intends shortly to discuss with the Privacy Commissioner what the permitted scope of positive data sharing should be and how the Code might be amended to reflect this. As is the Privacy Commissioner's usual practice, any amendments to the Code would be put to full public consultation. The HKMA will also continue to discuss the issue with the Consumer Council.

## **X. Summary and Conclusions**

65. There have been a number of initiatives over the last year or so to improve protection for bank customers. The Code of Banking Practice has been revised with substantial improvements made to enhance customer protection. The HKMA has made use of its existing powers to formalise a guideline on banks' complaint handling procedures. Furthermore, there are further initiatives to enhance the consumer protection regime in the pipeline. The DIS will be introduced after the implementation framework has been finalised. The CoBP Committee has recently commenced operation, through which the industry Associations will perform an enhanced role in developing and administering the Code. Coupled with the self-assessment framework which will first be conducted in September this year, this is expected to enhance compliance with the Code. These measures all serve to enhance the protection to bank consumers, while avoiding imposing too heavy a regulatory and cost burden on banks.

66. The HKMA will continue its efforts in handling customer complaints against banks and will carry out examinations to check on the effectiveness of the guideline on complaint handling procedures for banks to resolve customer disputes. It will collaborate with the industry Associations in the effective implementation of the revised Code and its future development. It will also continue to monitor compliance with the Code in the light of the results of the self-assessment framework.

67. Furthermore, the HKMA will ensure that public consultation during the policymaking process continues to be given a high priority. The HKMA of course will keep up its existing work on public education and community programmes to promote better understanding of the banking system in Hong Kong. We will also discuss with other parties such as the

industry Associations and the Consumer Council whether more can be done on enhancing consumer awareness on banking products.

68. Despite the above efforts, as noted in the paper, the HKMA does not have an explicit statutory mandate for consumer protection. A specific statutory responsibility for consumer protection (with the enforcement powers to back it up) would no doubt make the HKMA's position more clear-cut; and if there were a consensus that the HKMA should be given this responsibility, we would be prepared to take it on. However, the present approach, whereby the HKMA relies on moral suasion, backed up ultimately by the sanctions in the Banking Ordinance, seems to be working reasonably effectively, and thus the status quo seems adequate for the time being. A point to be borne in mind is that the resources implications for the HKMA and the increased cost burden for the industry, which is currently facing difficult conditions, of a more elaborate regulatory framework would need to be carefully considered.

69. The HKMA remains open minded on whether any external mechanism, such as a Banking Ombudsman scheme, is desirable. The benefits have to be carefully weighed against the costs and at the moment, a clear case is not apparent. The HKMA welcomes any comments that the Legislative Council or the public may have on the need for a Banking Ombudsman and the organisational arrangements for such a scheme.

70. With respect to banks' charging policy, the HKMA does not believe that its role in relation to consumer protection can, or should, extend to the regulation of fees and charges on banking services. Rather, in co-operation with the banking industry, its main focus should be on efforts to encourage transparency in banks' charging policies within a competitive market environment. Given the diversity in the banks' approach to charging, there does not appear to be a need for any official initiative at this stage to sponsor the provision of new types of basic banking accounts. But the HKMA will continue to encourage banks to be sympathetic to customers such as the elderly and recipients of social benefits, and to offer alternative low-cost means of accessing banking services. The Government will also keep on monitoring market developments to check that basic banking services are available at a reasonable cost.

71. Last but not least, the HKMA believes that greater sharing of "positive" consumer credit data among banks, via a credit reference agency, would help to control the rising problem of consumer defaults. This would benefit the banks by enabling them to expand their business in a responsible manner. But it would also help consumers by mitigating the problem of over-indebtedness of borrowers and helping to reduce the cost and increase the availability of credit. It would reduce the extent to which good borrowers

currently subsidise the bad. It could also promote healthy market competition and growth which would be beneficial to Hong Kong as a financial centre. Without adequate sharing of credit information, there is also a risk that growing defaults may cause the banks to tighten credit too aggressively, which would not be conducive to economic recovery. It is recognised however that the privacy aspects of greater data sharing would need to be carefully addressed. The HKMA does not believe that this should represent an insurmountable obstacle given the fact that a fully-fledged statutory regime to safeguard the privacy of personal data already exists in Hong Kong. The HKMA intends shortly to discuss with the Privacy Commissioner what the permitted scope of positive data sharing should be and how the Commissioner's Code of Practice on Consumer Credit Data might be amended to allow this.

***Hong Kong Monetary Authority***  
***8 February 2002***

**Enclosures:**

- Annex A Summary of Public Response on the Protection for Bank Customers
- Annex B Major Improvements to the Revised Code of Banking Practice 2001
- Annex C Customer Complaints received by the HKMA for the period 2000 – 2001
- Annex D Guideline on Complaint Handling Procedures

## **Summary of Public Response on the Protection for Bank Customers**

In response to the HKMA's Comparative Study on Banking Consumer Protection and Competition Arrangements in the UK, Australia and Hong Kong, the HKMA has received feedback on issues related to protection for bank customers from the Consumer Council, Democratic Party and the banking industry.

### Consumer Council

2. In the absence of a general consumer protection agency in Hong Kong, the Council is supportive of the work of the HKMA in promoting the cause of consumer protection in the financial sector and welcomes any organisational arrangements within the HKMA that support that cause. It should however be noted that the Council is undergoing a review of its future role as the general consumer protection agency in Hong Kong. The Council considers that the proposals that will be put forth later might likely overlap with the work of the HKMA, in so far as the latter takes on a consumer protection role.

3. As far as the handling of customer disputes is concerned, the Council believes that there is a need for an easily accessible means of resolving disputes and achieving redress for customers of banking services, in case a complainant and the bank cannot arrive at a satisfactory resolution. The Council recommends that the HKMA should explore with the industry, an appropriate mechanism for introducing dispute resolution procedures, for example by considering whether an independent and centralised dispute handling mechanism such as a banking ombudsman should be established.

### Democratic Party

4. The Democratic Party made a submission to the Administration in June 2001 on the impact of interest rate deregulation and consumer protection. The Party has put forth a number of policy recommendations in the submission including the enhancement of the Code of Banking Practice, review of the role of HKAB, and the establishment of a banking ombudsman scheme. More specifically, the Party urges the Government to conduct a comprehensive study of the pros and cons of a voluntary and a compulsory ombudsman scheme. With respect to the role of the regulator in such a scheme, the Party recommended that the HKMA could consider setting up an independent executive committee to oversee the ombudsman scheme, appoint the committee members, and monitor its operation.

*The Banking Industry*

5. The Banking Advisory Committee and the Deposit-taking Companies Advisory Committee discussed issues relating to the protection of bank customers in June 2001. Members expressed the view that the industry had always worked closely with the Government, the Consumer Council and the Legislative Council on consumer protection issues. Customer complaints were taken seriously by the banks because they helped to improve banking services. In addition, there were currently many channels through which consumers could lodge complaints against banks. Despite the suggestion of a member that the HKMA should enhance its role in the handling of customer complaints, the consensus view of the Committees was that there did not appear to be an urgent need for establishing a banking ombudsman scheme to resolve bank customer disputes at this stage. Nevertheless, the Committees agreed that the situation should be monitored closely to see if there were any worsening trends that demanded further action by the regulators or the industry. The Committees also noted that the setting up of a banking ombudsman scheme would add to the cost of doing business in Hong Kong which might in turn have an adverse impact upon the effectiveness and efficiency of the banking system. It should be carefully considered whether the costs of introducing additional measures for dealing customer complaints would be justified.

6. The Hong Kong Association of Banks generally shared the views of the two advisory committees. The Association considered that protection for bank customers is not lacking in Hong Kong, given the Code of Banking Practice. In addition, there are various organisations or regulators, such as the Consumer Council, the Privacy Commissioner, the Equal Opportunities Commission, which are very vocal on consumer protection issues. As far as the impact of the increase in banks' fees and charges on vulnerable customers is concerned, the exclusion of low-income customers from basic banking services does not appear to be a major problem as there are various exemptions to cater for this group. On dispute resolution, the HKMA will shortly issue a guideline on banks' complaint handling procedures and it already plays a role in handling customer complaints. The HKAB therefore believes that there is not a proven need for a banking ombudsman in Hong Kong. Additionally, it should be carefully considered whether the incremental cost associated with enhanced protection is justified and any measures introduced do meet the needs of the people of Hong Kong. The Association suggests that an appropriate approach is to identify key consumer issues precisely and then determine a solution most suited to the local market.

## **Major Improvements to the Revised Code of Banking Practice 2001**

Major improvements to the Code include:

### Terms and conditions of banking services

These provisions aim to make the terms and conditions of banking services more transparent and more consumer-friendly:

- *Institutions should make readily available to customers and prospective customers written terms and conditions of a banking service. They should be prepared to answer any queries of customers or prospective customers relating to terms and conditions. (section 5.1)*
- *In drawing up terms and conditions for banking services, institutions should have due regard to applicable laws in Hong Kong, including, in particular, consumer protection legislation. (section 5.5)*

### Annualised percentage rates (APRs)

These provisions aim to facilitate customers to compare different charging structures of institutions and ensure that institutions do not charge customers extortionate interest rates:

- *Institutions should quote the APRs of credit card borrowing and personal loans which are revolving in nature in accordance with the standard method set out in the relevant guidelines issued by the industry associations. (section 19.4 and 24.1(c))*
- *For personal loans with a specified maturity date, institutions should quote the APRs for different tenors which are commonly selected by customers. (section 19.3)*
- *While institutions are exempt from the Money Lenders Ordinance to allow them free scope to set interest rates under the Currency Board arrangement in Hong Kong, they should not charge customers extortionate interest rates. (section 12.3)*

### Notification of changes to fees and charges

These provisions aim to enhance the transparency of the setting and revision of fees and charges by institutions.

- *Institutions should give at least 30 days' notice to affected customers before any change in the level of fees and charges (including any change in the basis on which fees and charges are determined) takes effect. Institutions should adopt effective means of notification which would provide reasonable assurance that their*

*customers will be informed of the change and which do not rely unduly on the customers' own initiative, such as by individual notification, press advertisement, prominent display of notice in banking halls, display of notice on ATM sites/screens, phone-banking messages, and notice posted on the website of the institution. (section 6.4)*

- *Institutions should inform customers of the basis on which fees and charges on deposit accounts will be determined. (section 18.2(d))*

### Card services

These provisions aim to bring card services in Hong Kong more in line with practices in other financial centres:

- *Cardholders' maximum liability for unauthorised transactions should not exceed HK\$500, provided that cardholders have not acted fraudulently or with gross negligence or have not otherwise failed to inform the card issuer as soon as reasonably practicable after having found that their cards have been lost or stolen. (section 30.3)*
- *Card issuers should not hold subsidiary cardholders liable for the debts of the primary cardholders or other subsidiary cardholders. (section 23.6)*

### Debt recovery practices and expenses

These provisions aim to promote the proper use of debt collection agencies by institutions and good debt collection practices by their agencies:

- *Institutions should have proper systems and procedures in place for the selection of debt collection agencies and the monitoring of their performance. These systems and procedures should be subject to regular review. (section 37.1)*
- *Institutions should require their debt collection agencies not to employ harassment or improper debt collection tactics. (section 36.2)*
- *Any cost indemnity provision contained in the terms and conditions should only provide for the recovery of costs and expenses which are of reasonable amount and were reasonably incurred. (section 7.1)*
- *Institutions should evaluate on a regular basis whether the charges of the debt collection agencies employed by them are reasonable having regard to the prevailing market practices. They should assess the reasonableness of any charge before passing it on to the customer concerned. (section 37.4)*
- *At the request of debtors, institutions should provide a detailed breakdown of the costs and expenses for which debtors are required to indemnify the institution. (section 7.2)*

### Electronic Banking Services

While the general provisions of the Code are applicable to all types of banking services regardless of the delivery channel, new provisions have been developed in order to provide specific guidelines to institutions that are particularly pertinent to the provision of banking services through electronic channels. These include:

- *When a customer enters into an agreement for an e-banking service, institutions should make clear and prominent disclosure covering issues such as a customer's liability for unauthorized transactions, all fees and charges applicable to e-banking services, and customer obligations relating to security of e-banking services, etc. (section 38.1)*
- *Unless customers have acted fraudulently or with gross negligence, they should not be responsible for any direct loss suffered as a result of unauthorised transactions conducted through their accounts. (section 40.1)*

### Stored Value Cards

In view of the increasing popularity of stored value cards, new provisions have been developed to promote good practices in the provision of stored value card services. These include:

- *Issuers of stored value cards should provide customers with general descriptive information relating to the use of stored value cards, including all fees and charges, any deposit payable by customers, the refund procedures, and any expiry date of the card, etc. (section 43.1)*
- *In case customers do not agree to any significant variation of the terms and conditions of a stored value card, they should be entitled to the full refund of the deposit and any residual value in the card. (section 44.5)*

**Hong Kong Monetary Authority**  
**February 2002**

### Customer Complaints received by the HKMA for the period 2000 - 2001<sup>1</sup>

Table 1: Total number of complaints received

	2000	2001	Sub-total
General complaints	279	449	728
Debt Collection Hotline complaints	339	431	770
<b>Total</b>	<b>618</b>	<b>880</b>	<b>1,498</b>

Table 2: General complaints by generic product type

	2000	2001	Sub-total
Credit cards	69	105	174
Deposit and savings account	41	75	116
Mortgage loans	29	68	97
Securities accounts	26	28	54
Unit trust and fund investment	6	27	33
Current account	14	22	36
Foreign exchange accounts	9	8	17
Remittance	6	9	15
Insurance products	3	0	3
Other <sup>2</sup>	76	107	183
<b>Total</b>	<b>279</b>	<b>449</b>	<b>728</b>

Table 3: Debt collection hotline complaints by nature of complaint

	2000	2001	Sub-total
Nuisance	252	296	548
Intimidation	66	126	192
Violence	21	9	30
<b>Total</b>	<b>339</b>	<b>431</b>	<b>770</b>

<sup>1</sup> Excluding enquiries, complaints withdrawn or against non-authorized institutions.

<sup>2</sup> Other complaints included those in relation to other credit facilities and guarantees, banks' policy and procedures, ATMs, quality of service, etc.

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This module should be read in conjunction with the [Introduction](#) and with the [Glossary](#), which contains an explanation of abbreviations and other terms used in this Manual. If reading on-line, click on blue underlined headings to activate hyperlinks to the relevant module.

## Purpose

To provide guidance on procedures to handle complaints in connection with the provision of banking or other financial services to personal and small business customers

## Classification

A non-statutory guideline issued by the MA as a guidance note

## Previous guidelines superseded

This is a new guideline

## Application

To all AIs

## Structure

1. Introduction
  - 1.1 Coverage
  - 1.2 MA's approach to complaint handling
2. Internal complaint handling procedures: key elements
  - 2.1 General principles
  - 2.2 Policies and procedures
  - 2.3 Accessibility
  - 2.4 Confidentiality
  - 2.5 Independence and authority in handling complaints
  - 2.6 Resources and staff training
  - 2.7 Monitoring and audit
  - 2.8 Management review



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3. Time limits for dealing with complaints
    - 3.1 Acknowledgement
    - 3.2 Final response
  4. Record keeping
    - 4.1 Retention period and coverage
    - 4.2 Access for inspection and reporting
  5. Cooperation with the HKMA and other complaint handling organisations
    - 5.1 Contact point
    - 5.2 Complaints referred by the HKMA
    - 5.3 Complaints referred by other organisations
  6. Exemption
- 

## 1. Introduction

### 1.1 Coverage

- 1.1.1 This module applies to complaints, whether oral or written, and whether justified or not, lodged with an AI by or on behalf of a customer, about an AI's provision of, or failure to provide, a service or product.

### 1.2 MA's approach to complaint handling

- 1.2.1 Under §7 of the Banking Ordinance, the MA has the functions, among others, of:
  - taking all reasonable steps to ensure that the places of business, etc. of AIs are operated in a *responsible, honest and business-like manner*;
  - *promoting and encouraging proper standards of conduct and sound and prudent business practices* among AIs; and
  - *suppressing or aiding in suppressing illegal, dishonourable or improper practices* in relation to AIs' business practices.



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- 1.2.2 The MA believes it is consistent with these functions to require AIs to have systems to ensure that customer complaints are fully and promptly investigated and resolved in a satisfactory manner. Apart from the issue of fairness to customers, complaints may be indicative of misconduct by staff (including possible fraud) or weaknesses in internal controls.
- 1.2.3 Failure to have in place effective arrangements to handle customer complaints may call into question whether an AI continues to satisfy the authorization criteria in the Seventh Schedule of the Banking Ordinance. Specifically para. 10 of the Seventh Schedule requires AIs to have adequate accounting systems and systems of control and para. 12 requires them to conduct their business with integrity, competence and in a manner not detrimental to the interests of depositors and potential depositors.
- 1.2.4 This module sets out the HKMA's recommendations on the key elements of an effective system for handling customer complaints.

## 2. Internal complaint handling procedures: key elements

### 2.1 General principles

- 2.1.1 AIs' complaint management systems should be:
- comprehensive in their coverage;
  - transparent, accessible to customers and easy to invoke;
  - fair and impartial as between both parties (i.e., between customers/complainants and AIs, including their staff);
  - consistent in their approach to the provision of redress;
  - flexible, simple and prompt;
  - efficient, with appropriate and measurable minimum performance standards; and
  - able to provide appropriate feedback to the regulator (i.e. the HKMA).



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#### 2.2 Policies and procedures

- 2.2.1 AIs should have in place appropriate and effective internal procedures for handling customer complaints, including those in relation to the practices of debt collection agencies employed by them. In formulating their procedures, AIs should take into account the provisions of section 13 of the Code of Banking Practice on the handling of customer complaints.
- 2.2.2 The internal complaint handling procedures should be in writing and their scope should include the following:
- receiving complaints;
  - responding to complaints;
  - the appropriate investigation of complaints; and
  - the availability of any redress or compensation in appropriate circumstances.
- 2.2.3 When deciding what constitute appropriate complaint handling procedures, AIs should have regard to:
- the products and services they provide;
  - their size and organisational structure;
  - the nature and complexity of the complaints they are likely to receive; and
  - the number of complaints they are likely to receive and have to investigate.
- 2.2.4 AIs should put in place appropriate management controls and take reasonable steps to ensure that they handle complaints fairly, consistently and promptly and that they identify and remedy any recurring, as well as any specific, problem identified by the complaints received.
- 2.2.5 AIs should take appropriate steps to handle anonymous complaints. Even if a complaint is anonymous, as with other complaints, any problem alleged by the complainant and substantiated by investigation should be rectified as soon as practicable.
- 2.2.6 AIs should be prepared to deal with complaints lodged by a third party on behalf of a customer, if the latter so chooses. A letter from the customer to the AI authorizing the third party to handle the complaint on his behalf should suffice under normal circumstances.



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2.2.7 In establishing their internal complaint handling procedures, AIs may wish to refer to international standards for complaint handling and management<sup>1</sup>.

2.2.8 For complaints referred to an AI by the HKMA, the AI should follow the recommendations in subsection 5.2 below.

### 2.3 Accessibility

2.3.1 AIs should ensure that customers know where and how to complain. Complaints should be received in a courteous manner.

2.3.2 AIs should:

- publish details of their internal complaint handling procedures, for example in the form of a leaflet and a notice on their websites;
- communicate in an effective manner to new customers the availability of their internal complaint handling procedures;
- supply a copy of the leaflet to customers upon request and automatically to the complainant when they receive a complaint (unless the complaint is resolved by close of business on the next business day of its receipt); and
- make available copies of their internal complaint handling procedures in each branch and each sales office to which customers have access for transacting businesses.

2.3.3 AIs should allow complainants to make a complaint by any reasonable means (for example, letter, telephone, facsimile, e-mail or in person). Special assistance should be given to customers with disability or language problems.

2.3.4 AIs' correspondence and literature relating to complaints should be in clear and plain language. Correspondence with customers should generally be in the language chosen or used by the customer.

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<sup>1</sup> Examples of these are (i) British Standard 8600: 1999 "Complaints Management Systems – Guide to Design and Implementation", and (ii) Australian Standard on Complaints Handling AS 4269-1995.



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#### 2.4 Confidentiality

2.4.1 Procedures should be designed to protect the identity of customers.

2.4.2 Information in relation to a complaint should be treated as confidential and should be processed by the responsible staff strictly on a need-to-know basis.

#### 2.5 Independence and authority in handling complaints

2.5.1 AIs' internal complaint handling procedures should make provision for:

- complaints to be investigated by an employee who was not directly involved in the matter which is the subject of the complaint;
- the persons charged with responding to complaints to have the authority to settle complaints (including offering redress where appropriate) or to have ready access to those who have the necessary authority;
- complaints, in appropriate cases, to be escalated to senior management for their personal attention; and
- responses to complaints to address the subject matter of the complaint adequately and, where a complaint is upheld, to offer appropriate redress.

2.5.2 Where an AI decides that redress is appropriate, it should aim to provide the complainant with fair compensation for any acts or omissions for which it was responsible.

2.5.3 Appropriate redress may not always involve a financial element. It may simply entail an apology, for example. Where financial redress is deemed appropriate, interest on the amount should be considered.

#### 2.6 Resources and staff training

2.6.1 AIs should make available the resources needed to ensure the efficiency and effectiveness of a complaint management system. Resources comprise staff (including those with specialised skills), appropriate training, technology and finance.



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2.6.2 AIs should take reasonable steps to ensure that all relevant employees (including employees of appointed agents) are aware of their internal complaint handling procedures and that they act in accordance with them. In particular, staff in contact with customers should be provided with training in how to handle complaints.

## 2.7 Monitoring and audit

2.7.1 AIs should set up effective procedures to monitor complaints and to make regular reports to their senior management for review. Information to be collected may include:

- statistics on the volume and type of complaints;
- how well the internal complaint management system meets prescribed performance standards;
- the level of customer satisfaction with how complaints are handled; and
- whether repeat problems are being identified and corrected.

2.7.2 Data monitoring may include gathering statistics on the following:

- complaints received;
- complaints substantiated;
- complaints acknowledged outside target time (see subsection 3.1 below);
- complaints resolved outside target time (see subsection 3.2 below) ;
- complaints going to court;
- further complaints by customers who remain dissatisfied with the results of investigation of the complaint;
- complainants' profiles;
- the nature and the value of redress provided;
- suggestions from customers arising from complaints;
- complaints referred by the HKMA; and



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- complaints referred by other organisations such as those referred to in para. 5.3.1 below.

2.7.3 Regular audits should be conducted by competent and independent staff. Audit exercises should aim at examining whether:

- the complaint handling procedures fulfil the stated aims of the policy; and
- the procedures are operating effectively.

2.7.4 The results of audits should be used to improve complaint handling procedures, operating processes, products and services as appropriate.

2.7.5 Responsibility and authority to make such changes should be assigned to staff with the appropriate competence.

### 2.8 Management review

2.8.1 AIs should carry out periodic reviews of the ability of their complaint management systems to meet customers' expectations.

2.8.2 Management reviews should consider the following:

- internal factors such as changes in organisational structure or products or services offered;
- external factors such as changes in legislation or technological innovation;
- the overall performance of the complaint management system; and
- the results of audits.

## 3. Time limits for dealing with complaints

### 3.1 Acknowledgement

3.1.1 AIs should send a written acknowledgement of a complaint within seven days of its receipt, giving the name or job title and contact details of the person handling the complaint within the AI (as well as details of their internal complaint handling procedures). AIs should consider whether to send written acknowledgement in



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respect of telephoned complaints where these are acknowledged over the phone.

- 3.1.2 AIs which are able to provide a final response (see subsection 3.2 below) within seven days of receiving a complaint may combine the acknowledgement of the complaint with the final response.

### 3.2 Final response

- 3.2.1 Within thirty days of receiving a complaint, AIs should send the complainant either:

- a final response; or
- a response which explains why the AI is not in a position to make a final response, gives reasons for the delay and indicates when it expects to be able to provide a final response.

- 3.2.2 In any case, a final response should be sent to the complainant within a reasonable period of time (normally not exceeding sixty days), taking the nature of the complaint into account.

- 3.2.3 For the purposes of this module, a final response means a response from the AI which either accepts the complaint (and where appropriate offers redress), offers redress without accepting the complaint or rejects the complaint and gives reasons for doing so.

## 4. Record keeping

### 4.1 Retention period and coverage

- 4.1.1 AIs should record and retain details of complaints for a minimum period of two years from the date of their receipt.

- 4.1.2 The details to be recorded should include, where applicable:

- the complainant's name;
- the substance of the complaint; and
- any correspondence between the AI and the complainant, including how the complaint was resolved and details of any redress offered by the AI; and



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- whether any alleged problems, if substantiated, were rectified and how.

#### 4.2 Access for inspection and reporting

4.2.1 The records should be kept in a convenient and accessible form to facilitate inspection by the HKMA during regular or ad hoc examinations.

4.2.2 If necessary, the HKMA may request a report from an AI on the number and type of complaints received and the manner in which they have been resolved.

### 5. Cooperation with the HKMA and other complaint handling organisations

#### 5.1 Contact point

5.1.1 To enhance communication with the HKMA in relation to complaint handling, AIs should provide the HKMA, at the time of their authorization or within one month after the issue of this module, whichever is later, with details of a single contact point within the AI for handling complaints.

5.1.2 AIs should notify the HKMA of any subsequent change in their contact point.

#### 5.2 Complaints referred by the HKMA

5.2.1 AIs should cooperate fully with the HKMA in the handling of complaints against them. The HKMA expects complaints referred to an AI to be fully investigated.

5.2.2 The AI concerned should submit the findings from its investigation, together with copies of any correspondence with the complainant, to the HKMA as soon as possible, but normally not later than thirty days after the date of the letter from the HKMA referring the complaint.

#### 5.3 Complaints referred by other organisations

5.3.1 AIs should render appropriate assistance to other organisations or parties<sup>2</sup> that have received complaints on the AIs.

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<sup>2</sup> Such as the Legislative Council, the Consumer Council, District Councils, and the media.



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5.3.2 Apart from handling the complaints as usual, AIs should make available the relevant correspondence and documents to such parties (subject to the need to maintain customer confidentiality and, if necessary, after seeking the consent of the complainant), as well as explaining their policy governing the subject matter of the complaint, actions taken to resolve the complaint and any offer of redress.

## 6. Exemption

6.1 Sections 3 and 4 do not apply :

- where an AI has taken reasonable steps to determine, and has determined, that the complaint is not made by, or on behalf of, a customer; or
- where the complaint has been resolved by close of business on the next business day of its receipt.

6.2 Section 3 does not apply where the complaint is anonymous.

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