

**Consumer Council
Submission to LegCo Panel on Financial Affairs
'Consumer protection in the banking sector'**

Introduction

1. The Consumer Council is pleased to provide further comments to the Panel on consumer protection in the banking sector. The various consumer issues raised at the Panel meeting of 26 February 2002 have previously been addressed in the Council's submission made at that meeting.
2. In this submission the Council will address the general issue of different forms of consumer protection. The choices available to Legco Members and government, as to an appropriate system for consumer protection that is best for the Hong Kong banking industry, or the economy in general are varied.
3. The Consumer Council will continue to study issues and speak for consumers' interest. It will also work closely with the HKMA in either referring complaints or working towards finding a resolution towards specific issues that arise.

Complaints handling

4. The Council welcomes the efforts of the HKMA and LegCo members to improve protection for consumers in the banking sector. The Council believes that as a matter of principle, the HKMA as the banking regulator should have the ultimate power to censure certain conduct that violates a code of conduct dedicated to protecting, and enhancing consumer welfare, thereby maintaining consumer confidence in the sector.
5. The question as to who should investigate complaints and deal with the consumers on a 'day to day' basis raises the following possibilities:
 - (a) an industry association, administering its own code of practice;
 - (b) an independent Industry Ombudsman;
 - (c) a special unit within the HKMA; or
 - (d) the Consumer Council in co-operation with the HKMA.

Industry association

6. In most jurisdictions overseas and in specific sectors in Hong Kong, industry self regulation is administered with some legislative backing, in order to instil a high degree of consumer confidence in such a scheme.

Industry Ombudsman

7. This option is common in many other jurisdictions, and may well be the ideal form of protection. This is because it combines the elements of industry expertise (through the appointment of a specialist Ombudsman), clarity in rule making and implementation, and can be created in a way to utilise a cost recovery method from the subject institution being complained against.

HKMA

8. The HKMA's submission notes the inherent conflict between being a prudential regulator and a consumer protector. The Council sees this as recognising the difficulty in making decisions that in some cases will be against the interests of banks that could impair their financial standing or market reputation. The HKMA has also noted the issue of resources and the fact that it needs to divert existing resources towards consumer protection initiatives.
9. The advantage, however, is that the HKMA has first hand information on the issue of complaints which will facilitate regulatory actions to be taken on justified cases.

Consumer Council in co-operation with HKMA

10. The Council has been handling complaints in the banking sector for a long time. In some cases these have been perennial issues that constantly reappear. The Council attributes the continuing nature of these complaints to the fact that currently the HKMA has not had the power to levy penalties against institutions that infringe standards of fair conduct and to change the marketing culture of institutions under its sphere of responsibility. Nonetheless, the efforts of the Council in co-operating with the HKMA is working, and will be improved once the HKMA is mandated with a consumer protection objective.
11. It should be noted that the Council is not as well resourced as the HKMA.

Sector specific regulation and consumer protection in general

12. While sector specific regulation is necessary and has merit, it is in the benefit of the Hong Kong economy to have an adequate general consumer protection framework to cover misleading conduct harming consumer interests; for the following reasons:
 - (a) Convergence of markets. The banking sector should not be looked at in isolation of other economic sectors due to the convergence that is taking place in markets, and the expansion of market players' activities across different sectors. For example, banks are increasingly offering a range of services to consumers that cut across traditional banking products; such as securities brokerage services and insurance, both of which are overseen by other agencies.
 - (b) Limitation of sector specific schemes. For example, as far as the banking industry is concerned, any consumer protection scheme that confines itself to authorized institutions under the jurisdiction of the HKMA will not have application to institutions that are not regulated by the HKMA.
 - (c) Certainty and efficient use of resources. It is not only in the interests of consumers that they have certainty as to who is responsible for protecting them, but in the interests of business that they are not burdened with having to deal with many different regulators. There is also a need to keep the cost of government low. A proliferation of different consumer protection agencies for different economic sectors would ultimately result in wasteful duplication.
13. The Council stresses that the primary concern is one of marketing conduct, such as misleading or deceptive conduct, false representations, or unfair sales practices. Undesirable marketing practices such as these can occur in many different economic

sectors, not just in relation to specific products. Ideally, any consumer protection rules that are introduced should have general application to ensure that loop holes do not arise within the economy.

The way forward

14. The Council considers that one way in which consumer protection in the banking sector can evolve further to enhance consumer protection and confidence in the sector is for some modification to the current arrangements. This would entail

- (a) empowering the HKMA to take corrective action in the sector;
- (b) constructing a separate consumer protection unit within HKMA to avoid any potential for conflict in serving the objective of consumer protection; and
- (c) as is currently taking place, working in co-operation with the Consumer Council.

15. On the basis of the experience gained under these arrangements, consideration can be given at a further stage towards gauging whether the consumer protection role taken on by HKMA should evolve further.

16. For example, one option that may be worthy of further consideration in the future that could provide an answer to the issues of providing a cost effective sector specific complaints handling service that

- a) works in a way to keep the costs of handling complaints to a minimum; and
- b) provides a fair and timely mechanism for better consumer protection.

is that of a Banking industry Ombudsman. Such a scheme, that is agreed on and operates under rules constructed by the industry and consumer representatives could be expected to have fair, efficient and simple to administer rules that provide consumers with certainty in terms of a one-stop complaint mechanism.

17. The incentives for consistency in the Ombudsman's decisions; and for firms to resolve legitimate complaints with consumers at an early stage could come about through funding the Ombudsman service on the basis of:

- a) a minimum general fee paid by all participating firms; and
- b) a user-pays element whereby any firms that have had a ruling made against them for a legitimate complaint, that they did not resolve of their own volition, would have to pay a specific additional levy.

18. This latter feature would act as a means to discipline participants to ensure that unfair practices do not arise in the first place; or if they do, they are resolved quickly.