

Press Release

Review of Terms and Conditions of Banking Services

The Hong Kong Monetary Authority (HKMA) announced today (Wednesday) the results of the second part of the comprehensive review conducted by authorized institutions (AIs) of their terms and conditions of banking services.

In October 2004 the HKMA requested AIs to conduct a comprehensive review of their terms and conditions of banking services to ensure compliance with the Code of Banking Practice. The first part of the review covering safe deposit box agreements was completed in November 2004, and the results were announced in December 2004. The second part of the review covers the terms and conditions of all personal banking services other than safe deposit box service.

In the second part of the review the HKMA has received 173 reports from AIs providing personal banking services. Thirty-four AIs, which do not provide personal banking services, are exempt from the review.

Of the 173 AIs that have conducted the review, 75 (43%) reported that their terms and conditions were in full compliance with the Code and did not require any amendments, whereas the terms and conditions of 98 AIs (57%) were found to be inconsistent with the Code. The majority of the non-complying AIs have used exemption of liability clauses that seek to exclude or limit the AIs' liability in circumstances where the damage is caused by the AIs' own negligence.

The HKMA has required all non-complying AIs to amend their terms and conditions by 30 September 2005. All of them have developed an action plan to rectify the situation. In revising their terms and conditions in this regard, AIs are required to observe the following principles:

- (i) If an AI intends to include an exemption of liability clause in its terms and conditions, it must satisfy itself that the clause would unlikely be made unenforceable by virtue of the Control of Exemption Clauses Ordinance as well as other consumer protection legislation such as the Unconscionable Contracts Ordinance and the Supply of Services (Implied Terms) Ordinance. In case of doubt, the AI should seek legal advice accordingly.
- (ii) An AI should not include in its terms and conditions an exemption of liability clause which excludes its liability for negligence unless it can justify that the inclusion of the exemption of liability clause is reasonable in the circumstances.
- (iii) If an AI includes in its terms and conditions an exemption of liability which seeks to restrict its liability for negligence to a specified limit, any such limit must be reasonable in the circumstances. The AI should advise the customer that its liability for negligence is subject to the limit specified in the exemption of liability clause.
- (iv) Where an AI has included an exemption of liability clause in its terms and conditions, it should draw the clause to the customer's attention.

“The HKMA takes compliance with the Code seriously. We will continue to follow up with those AIs whose terms and conditions were found to be inconsistent to ensure that appropriate amendments are made to their terms and conditions,” said Mr Raymond Li, Executive Director (Banking Development) of the HKMA.

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