

Ref: B1/1C

17 December 2004

The Chief Executive
All authorized institutions

Dear Sir/Madam,

Review of Terms and Conditions for Safe Deposit Box Service

The HKMA has requested authorized institutions (AIs) to conduct a comprehensive review of their terms and conditions for banking service to ensure compliance with the Code of Banking Practice. I am writing to inform you of the summary results of the review covering the terms and conditions for safe deposit box (SDB) service.

The HKMA has altogether received **27** reports from AIs. All of the AIs concerned have included exemption of liability clauses (ELCs) in their terms and conditions for safe deposit box service. Of these 27 AIs, **24** of them attempt to exclude their liability or limit their liability to a nominal amount even if the loss or damage is caused by the negligence of the AI or its staff. Only **3** AIs assume liability for their own negligence without specifying an upper limit.

The HKMA considers that the exemption of liability clauses used by the 24 AIs are inconsistent with the Code of Banking Practice and therefore should be amended. We note that most of the AIs have developed an action plan to rectify the situation. The HKMA is following up with those AIs which have not yet come up with a detailed rectification plan.

Having reviewed the action plans submitted to the HKMA so far, we recommend AIs to take into account the following principles when revising their terms and conditions for safe deposit box service:-

- (i) If an AI intends to include an ELC 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 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 ELC which excludes its liability for negligence unless it can justify that the inclusion of the ELC is reasonable in the circumstances.
- (iii) If an AI includes in its terms and conditions an ELC 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 ELC.
- (iv) Where an AI has included an ELC in its terms and conditions, it should draw the ELC to the customer's attention.
- (v) An AI should where appropriate advise the customer to take out insurance on the contents of his or her SDB.

Where the outcome of the review has revealed that changes to an AI's terms and conditions for safe deposit box service are required, the AI concerned should submit a report to the HKMA before **31 March 2005** to confirm that the necessary changes have been completed or, if not, explain why extended time is required. The report should be addressed to your usual contact with the HKMA.

In connection with the use of exemption clauses by AIs, I would also like to draw your attention to the fact that the Code of Banking Practice Committee has recently revised the Code. First, in drawing up terms and conditions for banking services, AIs should give due regard specifically to the three main consumer protection legislation, namely the Control of Exemption Clauses Ordinance, the Unconscionable Contracts Ordinance and the Supply of Services (Implied Terms) Ordinance. Secondly, AIs should keep their terms and conditions under review to ensure they are consistent with the Code (including the above legislation). AIs should take into account these new provisions of the Code, which has already taken effect, when they revise their terms and conditions under the current review exercise.

In addition to the above, we would also like to remind AIs that they should make readily available to customers and prospective customers written terms and conditions of banking services, including SDB service, in accordance with s5.1 of the Code. They should also ensure that the fees and charges are highlighted in the terms and conditions (re s5.4 of the Code) and thus made known to customers in a transparent manner.

Finally, please be reminded that the review of the terms and conditions for other banking services is due by 15 January 2005. If you have any questions on the content of this letter, please contact Ms Carman Chiu at 2878 1474 or Miss Gillian Hui at 2878 1275.

Yours faithfully,

Arthur Yuen
Executive Director (Banking Development)

c.c. Secretary for Financial Services and the Treasury (Attn: Mrs Millie Ng)
Code of Banking Practice Committee (Attn: Secretary)
Consumer Council (Attn: The Chief Executive)