



HONG KONG MONETARY AUTHORITY
香港金融管理局

By fax (2869 6794) and mail

14 April 2005

Clerk to Panel on Financial Affairs
Legislative Council Secretariat
3rd Floor, Citibank Tower
3 Garden Road
Hong Kong

(Attn: Ms Connie Szeto)

Dear Connie,

**Panel on Financial Affairs
Follow-up to meeting on 17 February 2005**

Further to my letter of 28 February, I write to provide the Panel with the updated compliance situation of the 24 Authorized Institutions (AIs) which have been required to revise the exemption of liability clauses (ELCs) in their safe deposit box agreements.

Members of the Panel will recall that the Hong Kong Monetary Authority (HKMA) had previously requested AIs providing safe deposit box service to review their terms and conditions of services. The outcome of the exercise showed that the 27 AIs providing safe deposit box service in Hong Kong had included ELCs in the terms and conditions of their safe deposit box service. Of these 27 AIs, 24 attempted to exclude their liability or limit their liability to a nominal amount even if the loss or damage was caused by the negligence of the AI or its staff. Only 3 AIs assumed liability for their own negligence without specifying an upper limit.

The HKMA considered that the ELCs used by the 24 AIs mentioned above were inconsistent with the Code of Banking Practice and therefore should be amended. It therefore required the AIs concerned to rectify the situation by the end of March 2005.


Having reviewed the action plans submitted by these 24 AIs, the HKMA is pleased to advise that all of them are either already in compliance or taking active steps to achieve compliance with the requirement under the Code of Banking Practice. By the end of March 2005, 17 AIs had already revised their ELCs such that they will not seek to exclude or set a limit on their liability in case the damage is caused by their own negligence. Five other AIs undertake that similar amendments will be made to their ELCs by the end of April 2005. The remaining two AIs have decided to terminate its safe deposit box service in the next couple of months and therefore no change to the terms and conditions of their service in this regard is considered necessary.

Members may also wish to note that based on the review results, the HKMA has already issued guidance to AIs on the use of ELCs in their terms and conditions of service, which has been put on the website of the HKMA. In formulating such guidance, the HKMA has to strike a reasonable balance between protecting consumer rights and upholding AIs' legitimate interest in managing their business risk. The overriding principle is that AIs should ensure that the use of such clauses is reasonable and enforceable. We also consider it important for AIs to make ELCs highly transparent to customers, and have therefore required AIs to draw to customers' attention any ELCs incorporated in the terms and conditions of service. As a further protection, AIs are required to advise their customers to take out insurance as and when appropriate in the use of safe deposit box service.

Regarding the suggestion for the HKMA to disclose the names of the 24 AIs concerned, our legal advice indicates that the HKMA is prohibited from doing so under the secrecy provisions of the Banking Ordinance.

I hope the Panel will find the above information useful.

Yours sincerely,



(Fiona Chan)
for Chief Executive
Hong Kong Monetary Authority

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