HONG KONG MONETARY AUTHORITY
香港金融管理局

*Banking Development Department* 銀行業拓展部

Ref: B1/1C

15 June 2005

The Chief Executive
All authorized institutions

Dear Sir/Madam,

**Review of Terms and Conditions of Banking Services other than Safe Deposit Box Service**

The Hong Kong Monetary Authority (HKMA) requested authorized institutions (AIs) to conduct a comprehensive review of their terms and conditions of banking services to ensure compliance with the Code of Banking Practice. Further to the HKMA's circular of 17 December 2004, I am writing to inform you of the summary results of the review covering the terms and conditions of banking services other than safe deposit box service.

The HKMA has received **173** reports from AIs which provide services to personal customers[1]. Many AIs (43%) reported that their terms and conditions were in full compliance with the Code and did not require any amendments. However, **98** AIs (57%) reported they found terms that were inconsistent with the Code.

Non-complying AIs reported that they used exemption of liability clauses which exclude or limit the AIs' liability in circumstances where the damage is caused by the AIs' own negligence. As this is inconsistent with the Code, all the non-complying AIs have undertaken to rectify the situation.

In revising the terms and conditions of banking services, AIs should 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

[1] 34 AIs which do not provide personal banking services are exempt from the review.

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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 clause 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.

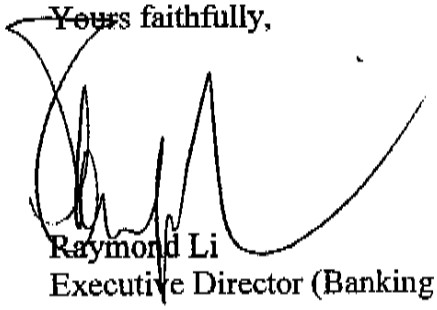
(iv) Where an AI has included an exemption of liability clause in its terms and conditions, it should draw the clause to the customer's attention.

Where the outcome of the review has revealed that changes to the terms and conditions of an AI are required, the AI concerned should submit a report to the HKMA before **30 September 2005** to confirm that the necessary changes have been introduced and are in compliance with the requirements of this letter. The report should be addressed to your usual contact with the HKMA.

We would like to remind AIs that they should review their terms and conditions of banking services from time to time in accordance with the revised section 5.6 of the Code.

If you have any questions on the content of this letter, please contact Ms Carman Chiu at 2878 1474 or Ms Abby Tam at 2878 1292.

Yours faithfully,



Raymond Li
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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)