Response from the Hong Kong Monetary Authority regarding the Supervisory Guidelines and/or Requirements to Safeguard against Conflict of Interests in the Discharge of Trustee Duties by Banks

The Hong Kong Monetary Authority (HKMA) has not issued any supervisory guideline dealing specifically with banks acting as trustees or undertaking trust business and the conflicts of interest that might result from trustees' duties to act in good faith in the interest of the beneficiaries of a trust.

2. The Seventh Schedule to the Banking Ordinance includes as a criterion for the continuing authorisation of a bank, a requirement that the business (including any business which is not banking business or the business of taking deposits) of the bank is carried on with integrity, prudence and the appropriate degree of professional competence.

3. Furthermore, the Seventh Schedule requires that every director, chief executive or executive officer of the bank (or where the bank is incorporated overseas, every chief executive or executive officer of the bank's business in Hong Kong and every director or chief executive of the bank's business in the place where it is incorporated) is a fit and proper person to hold his position.

4. If a bank were to operate a trust business in Hong Kong, the business would have to be conducted in such a manner as to ensure that the trustee entity could comply with its fiduciary duty to act in good faith in the interests of the beneficiaries of the trust and not be placed in a position where its duty and interests may conflict. If the bank or its directors, or senior officers were to seek to influence, or trespass upon, that duty to the detriment of trust beneficiaries, then such conduct would not be regarded as proper and the bank would not be regarded as conducting its business with integrity in a fit and proper manner. Similarly, the fitness and propriety of the directors or senior officers would also be called into question. The MA would expect banks operating a trustee business to ensure its independence of action. Failure to do so could give rise to supervisory action including, but not limited to, the imposition of directions on the bank. Where individual directors or officers authorised by the MA to hold their senior rank are to blame for any undue influence, that authorisation to hold office may be revoked.

5. In addition, there are provisions in the MA's supervisory policy manual, for instance, in the modules on "Code of Conduct" and "Corporate Governance of Locally Incorporated Authorized Institutions" which deal more generally with conflicts of interest in terms of the conflicts which staff and directors of a bank may encounter in the course of their duties. The Code of Conduct provides,

> "All staff should avoid situations that may lead to or involve a conflict of interest, actual or potential and, in case of doubt, should seek the advice of the Code of Conduct officer."

and the module on Corporate Governance, in referring to directors' fiduciary duties, notes that a director

> "must guard against a conflict of interests in dealing with the Authorised Institutions."

Thus, if a bank's staff or directors were, for instance, appointed to the board of a customer company, they would have to take steps to ensure that their duties to the customer company did not conflict with their duties to the bank.

Hong Kong Monetary Authority
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