

**Extract of minutes of special meeting of
the Panel on Financial Affairs on 26 February 2002**

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I Consumer protection in the banking sector

LC Paper No. CB(1)1114/01-02(01) - Paper on "Consumer Protection in the Banking Sector" provided by the Administration

LC Paper No. CB(1)1114/01-02(02) - Paper on "Progress on the Deposit Insurance Scheme" provided by the Administration

LC Paper No. CB(1)1114/01-02(03) - Paper on "Exchange Rates of Credit Card Overseas Transactions" provided by the Administration

LC Paper No. CB(1)1114/01-02(04) - Paper on "Recovery of Debts by Banks from Personal Referees" provided by the Administration

LC Paper No. CB(1)1112/00-01(02) - Report on "Comparative study on banking consumer protection and competition arrangements in the United Kingdom, Australia and Hong Kong" provided by the Hong Kong Monetary Authority

LC Paper No. CB(1)626/01-02(02) - Paper on "Reference materials for deliberation on the protection for consumers in the banking sector" prepared by the Legislative Council Secretariat

LC Paper No. CB(1)626/01-02(01) - Research paper on "Protection for Banking Consumers in the United Kingdom and the United States of America: Fees and Charges" provided by the Research and Library Services

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Division of the Legislative
Council Secretariat

- LC Paper No. CB(1)1113/01-02(02) - Paper provided by Consumer Council
- LC Paper No. CB(1)1113/01-02(01) - Submission of views from a member of the Eastern District Council
- LC Paper No. CB(1)806/01-02(01) - Letter from Hon SIN Chung-kai regarding the fees charged by banks for credit card payments in foreign currencies
- LC Paper No. CB(1)644/01-02(01) - Extract of minutes of meeting between LegCo Members and Shatin District Council Members on 29 November 2001 regarding the recovery of debts by banks and other authorized institutions from personal referees
- LC Paper No. CB(1)344/01-02 - "The Revised Code of Banking Practice" launched on 15 November 2001 jointly by the Hong Kong Monetary Authority, the Hong Kong Association of Banks, and the DTC Association

The Chairman welcomed the representatives from the Administration including the Hong Kong Monetary Authority (HKMA), representatives from the Hong Kong Association of Banks (HKAB), the DTC Association (DTC) and the Consumer Council (CC) to the meeting. He then invited them to present their views on the subject of consumer protection in the banking industry.

Introduction by the Administrator

2. The Deputy Secretary of Financial Services (DS/FS) said that over the past year or so, the Administration had done substantial work to enhance protection for banking consumers, while exercising prudential regulation of the banking industry. One of the major initiatives in this regard was the development of the revised Code of Banking Practice (the Code), which took effect on 1 December 2001. The revised Code sought to enhance transparency in the provision of banking services and to provide greater protection for bank customers. In developing the revised Code, HKMA, HKAB and the DTC

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Association had been receptive to the views of the public. The Administration together with the industry associations would continue to monitor and review the effectiveness of the Code for protecting consumers in the banking sector.

3. The Deputy Chief Executive of the HKMA (DCE/HKMA) highlighted the following points -

- (a) While HKMA did not have an explicit mandate in the area of consumer protection under the Banking Ordinance (Cap. 155), HKMA had expanded its role in relation to consumer issues in the banking sector. To this end, HKMA had been actively involved in drawing up and refining the Code, and had encouraged authorised institutions (AIs) to adhere to the Code and treat their customers in a fair and transparent manner. Moreover, HKMA had recently developed a new guideline for AIs to deal with customer complaints. He added that if there was a consensus that HKMA should be given the specific responsibility for consumer protection, HKMA would be prepared to take it on;
- (b) With the downturn of the economy, the rapid growth in credit cardholder numbers and the introduction of new banking fees and charges, it came as no surprise that bank customer complaints had increased in 2001. On the other hand, complaints, viewed positively, reflected heightened consumer awareness, and would assist banks to upgrade their customer service quality. HKMA was pleased to have observed that banks had generally been responsive to customer complaints. Of the 880 cases of complaints received in 2001, most had been resolved by the banks concerned, and only about 80 cases (about 9%) required further assistance from HKMA;
- (c) HKMA was aware that the introduction of fees and charges for some basic banking services recently by some AIs had aroused public concern. However, it would not be appropriate for HKMA to intervene in these commercial decisions. HKMA's role in this regard was to ensure that AIs maintained a high level of transparency in respect of their fees and charges. HKMA had observed that some banks had voluntarily granted fee exemptions or concessions to disadvantaged groups;
- (d) On the need for a Banking Ombudsman in Hong Kong similar to the relevant arrangements in the United Kingdom (UK) and Australia, HKMA was of the view that a Banking Ombudsman might *prima facie* provide a more flexible and lower-cost alternative to legal action. However, in consideration that a Banking Ombudsman would require substantial expertise and

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resources and thus would add an extra layer of costs to the operation of banks, HKMA had reservation on such a proposal. However, HKMA remained open on this issue depending on whether the benefits would justify the cost required; and

- (e) HKMA believed that there was pressing urgency to seriously consider the proposal to share positive customer data among banks in the light of increasing credit card delinquencies. Implementation of the proposal would benefit both banks and consumers by improving banks' credit assessment and controlling the growth of bad debts. As a result, credit could be made more easily available to consumers, and at a lower cost. HKMA would work closely with the Privacy Commissioner for Personal Data on the matter. HKMA maintained, however, that even if the proposal was implemented, banks still had the obligation to exercise prudent credit control.

Presentation by Hong Kong Association of Banks

4. Mr LO Chung-hing, Acting Chairman of HKAB said that competition was the main driving force for banks to improve their customer services, to offer their products and services at competitive prices, and to operate in a transparent manner. It was in banks' interest to comply with the code and maintain cordial relationship with consumers in order to establish their credibility among customers. Mr LO stressed that banks had been diligent in self-regulation. In 2001, there were only about 80 complaint cases that could not be fully resolved by banks and required further assistance from HKMA. HKAB would continue to promote faithful compliance with the Code among its member banks.

5. Mr LO said that sharing positive consumer credit data among credit providers had been the practice of the UK, the United States (US), Canada, and would be soon followed by Singapore. With both positive and negative consumer credit data available, banks would be able to detect customers' liquidity problems before such problems became unmanageable. This in turn would help safeguard the stability of the banking system.

Presentation by the DTC Association

6. Mr Cliff FORSTER, Chairman of DTC highlighted the following points in his presentation-

- (a) Generally, banking consumers were well protected by the current legal and regulatory regime, which included the Banking Ordinance (Cap. 155), the Unconscionable Contracts Ordinance (Cap. 458) and the Code. The level of banks' fees and charges should be determined through competition. Banks were

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motivated under competition to operate transparently and to handle complaints efficiently. DTC did not consider it desirable to establish a Banking Ombudsman in Hong Kong;

- (b) The current complaint handling mechanism had worked well with the HKMA and the Consumer Council already performing their respective roles and with the collaborative efforts of the banking industry. Setting up a Banking Ombudsman would likely create additional bureaucracy and expenditure, and the additional costs would somehow be shifted onto customers;
- (c) Consideration should be given to widening HKMA's disciplinary powers, similar to those conferred on the Securities and Futures Commission, so as to enable HKMA to effectively deal with contravention of the Code in cases where formal punishment against an AI was warranted, but where removal/suspension of authorization would be too severe; and
- (d) Over-indebtedness of banking consumers had resulted in increasing bad debts and rising cost of credit, and thus borrowers who repaid on time were subsidizing those who defaulted. DTC supported the proposal to share positive consumer credit data among credit providers, on account that the arrangement would facilitate better risk assessment, and prevent borrowers with weak liquidity from getting into unmanageable financial problems.

Presentation by the Consumer Council

7. Mrs CHAN WONG Shui, Chief Executive of CC highlighted the following points in her presentation -

- (a) To establish consumers' confidence in our banking industry, banks should maintain high transparency in their provision of services and offer open channels for customer complaints. CC held the view that setting up a Banking Ombudsman was one of the possible options for enhancing the current complaint handling network, and that the Administration should set up a task force to examine the options available;
- (b) CC noted that there were specific regulatory bodies and comprehensive legislation for protecting banking consumers in some overseas jurisdictions such as the US, UK and Australia. CC supported the work of HKMA in promoting the cause of consumer protection in the banking sector and welcome legislation that would make HKMA's position and powers more clear-cut in this regard;

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- (c) CC also noted that in the UK, there was a mechanism for consumer consultation on banking related legislation and policies. While CC was performing a similar role in Hong Kong, it would welcome initiatives to refine the framework under which the industry could seek representations from a wider consumer audience;
- (d) CC was concerned about the marketing strategies of many credit providers, where the ease of obtaining credit had been overly emphasized and consumers however had not been made wary of the compounding effect of interest on the debt, and as a result some consumers had sunk into unsustainable debt; and
- (e) CC noted that two-thirds of credit cardholders paid their monthly balances in full, and did not pose a risk of generating bad debts. The proposal to share positive consumer credit data among banks might subject the majority of consumers to unnecessary scrutiny. CC considered that the issue of safeguarding privacy should be adequately addressed before proceeding with the proposal of sharing positive consumer credit data. CC would continue to work closely with HKMA, HKAB and the Privacy Commissioner for Personal Data to study the proposal further.

Presentation by the LegCo Secretariat

8. At the Chairman's invitation, the Assistant Secretary General(1) (ASG1) and the Head of the Research and Library Services Division (H(RL)) presented the comparison of measures to protect banking consumers in the UK, the US, Australia and Hong Kong. The comparison covered the regulatory framework, roles and functions of the respective regulatory bodies, the complaints handling mechanism, and the extent of consumer consultation and education in the banking sector in these jurisdictions. ASG1 highlighted that in developing the comparison, reference had been made to the materials brought back by the delegation comprising members of the Financial Affairs Panel and the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 during its overseas duty visit to the UK and the US in April 2001. The main details of the presentation of ASG1 and H(RL) were set out in Appendix II to LC Paper No. CB(1)626/01-02(01).

9. The Chairman thanked the Administration and the other bodies for their presentations and reminded members that the subject of sharing of positive consumer credit data had been scheduled to be discussed at the Panel meeting on 9 April 2002.

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Discussion with members

Role and enforcement powers of HKMA in consumer protection

10. Mr James TIEN pointed out that while SFC had a wide scope of disciplinary powers over licensed securities dealers, HKMA did not have powers of a similar scope for regulating AIs. He considered that the Administration should consider if HKMA should be given a wider scope of disciplinary powers to back up its regulatory role.

11. Miss Emily LAU noted that in other jurisdictions there was specific legislation to protect banking consumers, and there were various regulatory bodies established to enforce such legislation. For Hong Kong, it was stated in the Banking Ordinance (Cap.155) that the principal function of HKMA was to promote the general stability and effective working of the banking system. The legislation contained no reference to consumer protection as a function of HKMA. She also noted that HKMA could only resort to either moral suasion or removal of authorization to enforce compliance with the Code. She considered that given the lack of an explicit mandate and enforcement powers over consumer protection matters, HKMA might have difficulties in handling cases of non-compliance with the Code nor could it act effectively to promote the interests of banking consumers. Miss LAU suggested that HKMA's role in relation to consumer protection should be reviewed, and apart from removal of authorization, there should be other sanctions proportionate to different acts of non-compliance with the Code.

12. DCE/HKMA in reply said that apart from moral suasion and removal of authorization, there were intermediate steps that HKMA could take against AIs which contravened the Code. He explained that the appointment of the chief executives and directors of AIs was subject to the consent of HKMA and in this regard, HKMA had to be satisfied that the chief executives and directors had discharged their duties in a fit and proper manner for their continual appointment. Part of being fit and proper was to ensure that adequate systems were put in place within the institution to deal with customer complaints and that these systems were operated effectively. DCE/HKMA however remarked that HKMA would welcome more powers, such as the power to make reprimands and impose fines to regulate banks in respect of consumer protection, if there was a consensus on the need for HKMA to take up the responsibility. In any event, HKMA would continue to deal with issues of non-compliance with the Code diligently within the confines of its powers.

13. Miss Emily LAU noted that to step up the efforts to monitor compliance with the Code, HKMA had introduced a new requirement, which would take effect in September 2002, on banks to provide a self-assessment report annually. She requested HKMA to give more details on how such a measure would help monitor compliance with the Code. DCE/HKMA said that in the UK there was

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a similar system, which served as one of the several mechanisms for checking compliance. While the assessment results in respect of individual AIs would not be published, aggregate and consolidated results might be published. Mr LO Chung-hing emphasized that banks thrived on integrity, and expressed his support for the annual self-assessment arrangement, which he considered would encourage banks to be more self-critical and to make necessary improvements promptly.

14. Mr HO Chun-yan said that it would not be realistic to rely on banks to allocate substantial resources to establish a truly effective complaint handling mechanism. He further said that Members of the Democratic Party supported in principle that HKMA should be given more enforcement powers in relation to consumer protection matters.

Fees and charges for basic banking services

15. In regard to fees and charges for banking services, Mr James TIEN pointed out that there were costs associated with fee concessions and waivers granted to disadvantaged minorities, and that these costs would be shifted onto other banking consumers. A balance should be struck between enabling access by disadvantaged minorities to basic banking services and protecting the interests of other bank consumers and those of the banks. Mr NG Leung-sing said that he shared a similar concern with Mr TIEN. He sought CC's views in this regard.

16. Mrs CHAN WONG Shui said that banking services had become an integral part of people's daily lives. CC therefore considered that the principle of Universal Service Obligation should be applicable to basic banking services in that these services should be made available to all citizens, even if it meant that the service providers and some consumers would need to share the additional costs required.

17. Mr CHAN Kam-lam said that in a modern and free economy, an efficient regulatory system for and healthy competition within the banking industry were critical for safeguarding the interests of banking consumers. He did not consider it appropriate to regulate the fees and charges of banks or exert control over the operation of banks. However, he was concerned that the marketing tactics used by some banks, such as offering pre-approved credit cards to consumers, might contravene the principle of prudent credit control and to some extent, had contributed to the problem of over-indebtedness of banking consumers. He urged banks to review their marketing tactics and issue credit cards in a more responsible manner.

18. In this connection, Mr HO Chun-yan raised concern that there was a tendency for banks to move out their branch offices from old public housing estates. In some old estates, even automatic teller machines (ATMs) were not

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provided. As a result, some public housing tenants had to travel a long way to conduct transactions on their bank accounts. He enquired if the Administration or the banking industry would take measures to improve the situation.

19. DCE/HKMA said that banks would do their best to be sympathetic to the need for basic banking services of public housing tenants. However, it was understandable that some banks had to scale down their branch office operation in order to control costs. Mr LO Chung-hing shared a similar view and said that HKAB and HKMA would be pleased to discuss with the Housing Authority feasible measures to facilitate banks to reinstate basic banking services in public housing estates. Mr HO Chun-yan suggested and members agreed that the Panel should write to the Housing Authority to request the latter to explore possible measures to improve the situation.

(Post meeting note: A letter dated 27 February 2002 to the Chairman of the Housing Authority on the above issue, and the latter's reply letter dated 18 April 2002 were issued to members vide LC Paper No. CB(1)1543/01-02 dated 22 April 2002.)

Complaint handling mechanism

20. Mr NG Leung-sing considered that Hong Kong had a robust banking industry and in general, banks maintained high transparency in their provision of services. He queried the necessity of setting up a task force to examine the option of establishing a Banking Ombudsman as suggested by CC, pointing out that CC and HKMA in many ways were already performing the essential functions of a Banking Ombudsman. He was concerned that if a Banking Ombudsman were established, there might be a duplication of functions with CC and HKMA. On the other hand, should CC be designated the role of a Banking Ombudsman, conflicts of role and functions between CC and HKMA would arise.

21. Mrs CHAN WONG Shui responded that CC maintained an open mind as to whether a Banking Ombudsman should be established, and that there was no implication in CC's submission of views that CC should ultimately take up the role of a Banking Ombudsman. CC however considered it worthwhile to set up a task force to examine the desirability of this and other options to refine the current complaint handling mechanism in the banking sector. In the process of the study, the public should be consulted and various factors including the characteristics of the local banking sector and the regulatory framework should be taken into account.

Guarantees and third-party securities

22. Mr HO Chun-yan and Mr TO Kun-sun were concerned that many existing practices of AIs and related legal documentation relating to loans and

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credit cards should be reviewed, as they were unfair or overly-harsh to banking consumers. For example, some banks required the supplementary credit cardholder to act as surety for the primary cardholder, and there were cases where the former went into bankruptcy as a result of debts incurred by the primary cardholder. Mr HO also noted that banks had the practice of requiring a surety to give unlimited financial guarantee over and above the amount of the facility granted to the borrower based on an 'All Monies Clause'. Mr TO said that there were also cases where the surety was required to guarantee not only the initial amount borrowed, but also any subsequent amounts borrowed by the same borrower.

23. DCE/HKMA said that HKMA had developed guidelines in respect of issuance of credit cards to ensure that AIs exercised due prudence in the provision of credit facilities. He also clarified that the Code had specifically laid down guidelines in regard to guarantees under the section on "Guarantees and Third Parties Securities". AIs were required to advise the surety in writing whether the guarantee or third party security included an All Monies Clause or was unlimited as to amount and if so, the implications of such liability.

24. Mr LO Chung-hing clarified that it was in fact a customary practice of banks to advise the surety and the borrower to consult their own legal advisors before signing any documentation for substantial loan amounts. He said that without the actual details available, he could not comment further on the cases referred to by Mr HO and Mr TO. Mr HO and Mr TO undertook to forward details of the cases to HKAB and HKMA for review.

Sharing of positive consumer credit data among credit providers

25. Mr Peter WONG, Vice Chairman, Bank Representative HKAB supplemented that since the Asian financial crisis, banks had allocated substantial resources to develop their business in the retail credit market, and these efforts had brought benefits to banking consumers as evidenced in the residential mortgage market over the past few years. Similarly, consumers had benefited from the keen competition in the credit card market, where banks offered generous gifts and improved services to consumers. He said that banks might respond to the rising credit card bad debts by tightening the provision of credit and/or by scaling down their marketing activities. The down side to these measures, however, was that they would dampen the revival of the economy. He opined that a better measure would be to set up a databank with positive and negative consumer credit data to be made available to banks, such that the latter could continue to provide credit facilities to creditworthy consumers, and control bad debts and costs more effectively.

26. Mr James TIEN said that Members of the Liberal Party supported in principle the sharing the positive consumer credit data among banks to tackle the problem of over-indebtedness and rising bankruptcies. Mr TO Kun-sun opined

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that HKMA and HKAB should conduct a comprehensive review to gauge the necessity for sharing positive consumer credit data, before seeking to implement such a proposal.

Way forward

27. Miss Emily LAU suggested and members agreed that the various issues raised at this meeting should be further discussed by the Panel in June 2002. Miss LAU also requested the Administration to review the effectiveness of the revised code and the adequacy of the enforcement mechanism in the meantime. DS/FS said that the current discussion served to identify issues relating to consumer protection in the banking sector that required further study and review. The Administration would review the role of HKMA in relation to consumer protection, the operation of the revised Code and the enforcement mechanism of the Code.

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