



FORM AD

**APPLICATION FOR A DECISION
UNDER SECTION 9 OF THE COMPETITION ORDINANCE
IN RESPECT OF THE CODE OF BANKING PRACTICE**

NON-CONFIDENTIAL VERSION

11 December 2017

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PART 1 GENERAL INFORMATION

1.1 *Name and address of the Applicants*

- 1.1.1 The full names of the Applicants are set out below and their addresses are set out in Part 1 of Annex 1.

Bank of China (Hong Kong) Limited

Bank of China International Limited

The Bank of East Asia, Limited

BNP Paribas

Citibank (Hong Kong) Limited

Dah Sing Bank, Limited

DBS Bank (Hong Kong) Limited

Hang Seng Bank, Limited

The Hongkong and Shanghai Banking Corporation Limited

Industrial and Commercial Bank of China (Asia) Limited

JPMorgan Chase Bank, National Association

Orix Asia Limited

Public Finance Limited

Standard Chartered Bank (Hong Kong) Limited,

(together, the "**Applicants**").

- 1.1.2 The Applicants are all institutions authorized under the Banking Ordinance (Cap. 155) ("**AIs**"). As AIs, the Applicants are expected and are required in effect to comply with the Code of Banking Practice ("**Code**") which is endorsed by the Hong Kong Monetary Authority (the "**HKMA**"). The HKMA is an institution established to assist the Monetary Authority¹ in the discharge of, amongst others, his statutory functions. The term "**Monetary Authority**" is used in this Application throughout to refer to the banking regulator in the context of discussing the banking supervisory regime and the related

¹ The Monetary Authority is a public officer appointed by the Financial Secretary under section 5A of the Exchange Fund Ordinance (Cap. 66) and is empowered with, amongst others, the responsibilities and powers under the Banking Ordinance (Cap.155) for regulating banking business and the business of taking deposits; supervising AIs so as to provide a measure of protection to depositors; and for promoting the general stability and effective working of the banking system.

powers and sanctions. The term "HKMA" is used when the content indicates that reference is to the office of the Monetary Authority.

1.2 Purpose of the Application

- 1.2.1 The purpose of this Application is to seek a decision pursuant to section 9 of the Competition Ordinance (Cap. 619 of the Laws of Hong Kong) (the "**Ordinance**") (a "**Section 9 Decision**") confirming that the First Conduct Rule under section 6 of the Ordinance does not apply to the giving effect to the Code by the Applicants by virtue of the exclusion in section 2 (Compliance with legal requirements) of Schedule 1 to the Ordinance ("**Legal Requirement Exclusion**"), since AIs are expected and are required in effect to comply with the Code pursuant to a legal requirement (as defined in and interpreted under the Ordinance and as more particularly explained in this Application).

1.3 Non-confidential description of the Application

- 1.3.1 The Code of Banking Practice ("**Code**") is issued by The Hong Kong Association of Banks and The DTC Association with the involvement and endorsement of the Hong Kong Monetary Authority ("**HKMA**") from the outset. The Monetary Authority expects Authorized Institutions ("**AIs**") to comply with the Code, which has the aim of enhancing consumer protection and has 'promotion of competition' as one of its general principles.
- 1.3.2 The coming into force of the Competition Ordinance ("**Ordinance**") in 2015 gave rise to some uncertainty as to whether certain provisions of the Code could raise competition law issues.
- 1.3.3 To ensure that the banking industry has sufficient legal certainty, the Applicants are seeking a decision from the Competition Commission ("**Commission**") pursuant to section 9 of the Ordinance that, for the reasons set out in this Application, the First Conduct Rule under section 6 of the Ordinance does not apply to AIs giving effect to the Code by virtue of the exclusion in section 2 of Schedule 1 to the Ordinance ("**Legal Requirement Exclusion**").
- 1.3.4 The Legal Requirement Exclusion is applicable to the Code for the following reasons:
- (a) A "legal requirement" is defined at paragraph 3(a) of section 2 of Schedule 1 to the Ordinance as a requirement imposed by or under any enactment in force in Hong Kong. The Commission's Guideline on the First Conduct Rule further interprets this as having to eliminate any margin of autonomy on the part of the undertakings concerned, compelling them to enter into or engage in the agreement or conduct in question.
 - (b) In effect, compliance with the Code is a requirement imposed on AIs under the Banking Ordinance. AIs do not have any margin of autonomy or scope for independent judgment and must comply with the Code. The establishment and drafting of the Code has been subject to involvement, review and endorsement of the HKMA from the outset. AIs are subject to a monitoring and reporting system in respect of their compliance with the Code and are required to conduct self-assessment on compliance with the Code periodically, as well as regular

examinations by the HKMA. Any failure to comply with the Code will call into question whether the AI concerned meets the minimum criteria for authorization under the Banking Ordinance, and the AI concerned could be subject to such supervisory actions as may be taken by the Monetary Authority under the Banking Ordinance, as appropriate.

- (c) As Hong Kong's banking regulator, the Monetary Authority is concerned with the conduct of banking business and promotes good banking practices through, amongst others, the endorsement, monitoring (including self-monitoring and reporting) and enforcement of the Code via appropriate supervisory actions as may be taken by the Monetary Authority under the Banking Ordinance.
- (d) The application of the Legal Requirement Exclusion to the Code will not undermine the purpose and integrity of this exclusion which applies only where an undertaking is required (without any room for discretion) to comply with a legal requirement, in form or effect.

1.4 Authorization

- 1.4.1 The Applicants agree and authorize the Commission to use the information provided in this Application for the purposes of processing the Application and making a decision under section 11(1) of the Ordinance, including by publishing the non-confidential version of the completed Form AD and attached supporting documentation (except Annexes 1, 3, 5, 6, 7, 12 and 15).

1.5 Applicants' representatives

- 1.5.1 The Application is made by Slaughter and May on behalf of the Applicants.
- 1.5.2 The contact details of Slaughter and May for the purposes of this Application are:

Natalie Yeung / Paddy Law
Slaughter and May
47/F, Jardine House
One Connaught Place
Central, Hong Kong

Tel: +852 2521 0551

Email: natalie.yeung@slaughterandmay.com / paddy.law@slaughterandmay.com

- 1.5.3 The representative industry associations of the Applicants are:

- (a) The Hong Kong Association of Banks ("HKAB"), the contact details of which are:

Secretary, HKAB
The Hong Kong Association of Banks
Room 525, Princes Building
Central, Hong Kong

Tel: +852 2521 1169
Email: info@hkab.org.hk

(b) The DTC Association ("DTCA"), the contact details of which are:

Association Secretary
The DTC Association
Unit 1704, 17/F Bonham Trade Centre
50 Bonham Strand East
Sheung Wan
Hong Kong

Tel: +852 2526 4079
Email: dtca@dtca.org.hk

- 1.5.4 The persons named above in paragraphs 1.5.3 and 1.5.2 have the Applicants' authorization to act for and on behalf of the Applicants regarding all matters related to the Application, including accepting service of documents from the Commission. A copy of the letter of authorization from each of the Applicants is attached as Annex 3.

PART 2 THE RELEVANT PARTIES

The Applicants

2.1 *The Applicants' business activities*

- 2.1.1 The nature, size and geographic scope of each Applicant's business is provided in Annex 1, Part 1.

2.2 *The Applicants' shareholding structure*

- 2.2.1 The corporate shareholding structure of each Applicant, including a description of its corporate structure, controlling shareholders and affiliations is provided in Annex 1, Part 2.

2.3 *The Applicants' turnover*

- 2.3.1 The worldwide turnover and Hong Kong turnover for the last financial year of each Applicant, as well as copies of the latest audited annual accounts of each Applicant is provided in Annex 1, Parts 1 and 3.

Other Relevant Party or Parties

2.4 *Background information on other Relevant Parties*

- 2.4.1 The Applicants consider HKAB and the DTCA to be relevant parties by virtue of the fact that they are the bodies responsible for issuing the Code. As such, they are parties interested in the Application and in the Commission's decision regarding the applicability of the Legal Requirement Exclusion to the Code.

HKAB

- 2.4.2 HKAB is a body corporate established under the Hong Kong Association of Banks Ordinance ("HKABO"). It is a co-issuer of the Code.

- 2.4.3 HKAB's objects are set out in section 4 of the HKABO as follows:-

- (a) *"to further the interests of licensed banks;*
- (b) *to make rules from time to time for the conduct of the business of banking;*
- (c) *to consider, investigate and inquire into all matters and questions connected with or relating to the business of banking;*
- (d) *to promote, consider, support, oppose, make representations as to and generally deal with any law affecting or likely to affect the business of banking;*
- (e) *to collect, circulate and disseminate information relating to the business of banking or otherwise likely to be of interest to members and others;*

- (f) *to represent its members at and appear before any public body, committee or inquiry or before any court or tribunal;*
- (g) *to act as an advisory body to its members and to co-operate and maintain relations with other bodies and organizations in all matters touching or concerning the business of banking;*
- (h) *to provide a meeting place or places for its members and to adopt such means of publicizing or making known its activities and information and opinions on matters touching or concerning the business of banking as may be thought fit;*
- (i) *to provide or procure, by means of a management agreement or otherwise, facilities for the clearing of cheques and other instruments, and for the processing of banking transactions presented by members;*
- (j) *to establish, subsidize, support, co-operate with or otherwise assist any person engaged in any artistic, cultural, benevolent, charitable, welfare or similar activity and to contribute money for and to take part in any such activities as the Committee may think fit;*
- (k) *to do or cause to be done all such other acts and things as may conduce to the progress, prosperity and advancement of the general body of members."*

2.4.4 The contact details of HKAB are set out at paragraph 1.5.3.

2.4.5 HKAB, being a body corporate established by ordinance, does not have shareholders as such. Its members, 156 in total, are limited to licensed banks in Hong Kong. Banks are authorized in Hong Kong by the Monetary Authority subject to the condition that they will become a member of HKAB and thereafter, in accordance with and subject to the provisions of section 7(1) HKABO, remain a member of HKAB. HKAB is managed by its Committee which comprises the three note issuing banks and nine other elected members. The chairmanship of HKAB rotates annually among the note issuing banks. The present Committee members are as follows:-

Note-issuing banks:

- (a) Bank of China (Hong Kong) Limited
- (b) Standard Chartered Bank (Hong Kong) Limited
- (c) The Hongkong and Shanghai Banking Corporation Limited

Local bank representatives:

- (d) The Bank of East Asia, Limited
- (e) Hang Seng Bank Limited
- (f) Nanyang Commercial Bank Limited

(g) Wing Lung Bank Limited

Foreign bank representatives:

(h) Bank of Communications Co., Limited

(i) The Bank of Tokyo-Mitsubishi UFJ, Limited

(j) BNP Paribas

(k) Citibank, N.A.

(l) Industrial and Commercial Bank of China Limited

DTCA

2.4.6 The DTCA is a company limited by guarantee incorporated under the Companies Ordinance. It is the co-issuer of the Code.

2.4.7 The contact details of DTCA are set out at paragraph 1.5.3.

2.4.8 The members of DTCA are restricted licence banks and deposit taking companies and it is controlled by its Executive Committee. The present members of the Executive Committee are:

(a) Allied Banking Corporation (HK) Ltd

(b) Bank of China International Limited

(c) Hablb Bank Zurich (Hong Kong) Limited

(d) Orix Asia Limited

(e) Public Finance Limited

PART 3 THE AGREEMENT OR CONDUCT

3.1 *Description of the agreement which is the subject of the Application*

3.1.1 The Code sets out practices to be adhered to by AIs in dealings with individual customers and a standard of acceptable and required banking practice. In form, the Code (provided at Annex 2) is a voluntary industry code of practice which contains principles applying to the relationship between AIs and individual customers. The Code is intended to, amongst other things, set out minimum standards for the promotion of good banking practices, increase transparency in the provision of banking services vis-à-vis customers, promote the fair treatment of customers to ensure customers' interests and to foster customer confidence in the banking system.

3.1.2 The Code covers current accounts, deposit accounts, loans and overdrafts, card services, payment services, electronic banking services and stored value services and the provisions of the Code apply to all AIs, which comprise:

- (a) all licensed banks in Hong Kong;
- (b) all restricted licence banks in Hong Kong; and
- (c) all deposit-taking companies in Hong Kong.

A list of AIs as of 30 November 2017 is provided at Annex 4.

3.1.3 The Code's general principles regarding customer protection include:

- (a) *equitable and fair treatment of customers;*
- (b) requirements in respect of disclosures and transparency;
- (c) promotion of education and awareness on the part of customers;
- (d) *responsible business conduct on the part of AIs and their agents;*
- (e) *protection of customer assets from fraud or misuse;*
- (f) protection of customer data and privacy;
- (g) procedure for handling complaints and seeking redress;
- (h) *encouraging competition by enabling customers to compare products offered by different AIs.² [Emphasis added]*

3.1.4 The Code has the aim of enhancing consumer protection and has promotion of competition as one of its general principles. The overall and intended effect of the Code is to provide protection to individual consumers of banking services within the specific

² See section 2 (General Principles) of the Code

context of the banking industry. This is a practical extension of other more general consumer protection legislation e.g. the Control of Exemption Clauses Ordinance, the Supply of Services (Implied Terms) Ordinance, the Unconscionable Contracts Ordinance, the Personal Data (Privacy) Ordinance and the Money Lenders Ordinance.³

- 3.1.5 One of the important objectives of the Code is the promotion of good banking practices by setting out the minimum standards which AIs should follow in their dealings with customers. The Code states that AIs should allow customers to search, compare and, where appropriate, switch between products and institutions easily and at reasonable and disclosed costs.⁴
- 3.1.6 The Code provides a standard for AIs' conduct, which is to be regarded as both fair and reasonable. In some areas, the Code prescribes that there should be no or reasonable fees for banking products and the methodology for how banking products should be priced, as well as certain trading conditions. These provisions have all been established following extensive consultation with members of HKAB and DTCA, the HKMA and the Consumer Council. In all cases, the provisions adopted have been regarded as fair to individual customers and constituting appropriate conduct for AIs.
- 3.1.7 The Monetary Authority expects all AIs to comply with the Code and, as the banking regulator, closely monitors compliance as part of its ongoing supervision of AIs. The Monetary Authority also requires AIs to conduct self-assessment on compliance with the Code periodically, and to report breaches of the Code to it as soon as practicable after occurrence. Any failure to comply with the Code may lead to the Monetary Authority taking supervisory actions against the AIs concerned as appropriate (as discussed in more detail in paragraph 4.3.20 onwards below).
- 3.1.8 The Code, as a set of voluntary industry guidelines issued by HKAB and the DTCA, may be characterised as a decision of an association of undertakings for the purposes of the First Conduct Rule under the Ordinance and the Commission's Guideline on the First Conduct Rule. HKAB is a statutory body and is exempt from the application of the First Conduct Rule pursuant to section 3(1) of the Ordinance. However, the Applicants recognise that, by complying with the Code, they may be giving effect to an "agreement" (which under section 6(2) of the Ordinance is to be read as applying equally to, or in relation to a decision by an association of undertakings).
- 3.1.9 During the preparation for the Ordinance coming into force on 14 December 2015, the Applicants were aware of uncertainties as to whether certain provisions of the Code could raise competition law issues. The Applicants therefore wish to obtain legal certainty through a Section 9 Decision that the First Conduct Rule does not apply to the Applicants' compliance with the Code by virtue of the Legal Requirement Exclusion.

³ However, note that the Money Lenders Ordinance does not apply to AIs.

⁴ Please refer to General Principle 2.8

- 3.1.10 Pending a decision by the Commission on the present Application, the Applicants are faced with a significant degree of uncertainty as to how they can legally comply with the Code.
- 3.1.11 On 11 December 2015, HKAB and the DTCA temporarily suspended the following sections of the Code: 5.10, 6.5, 12.3, 22.5,⁵ 22.11, 26.1(c), 26.9, 26.12, 26.15(e), 26.15(f), 28.2, 28.3, 28.4, 28.5, 30.1, 34.3, 36.3 and 52.1 (the “**Suspended Provisions**”). This action was taken in view of the need for legal certainty that AIs are in full compliance with all laws, notwithstanding that, from a competition perspective, the Code does not have the object of harming competition, as there is an absence of any anti-competitive intention or purpose and there are good legal and economic arguments that the Suspended Provisions do not have harmful effects on competition in Hong Kong. On the contrary, throughout the many years that the Code has been in force, the banking sector in Hong Kong has been characterised by a highly competitive offering to consumers, with a diverse and broad range of banking products, as well as frequent market entrants.
- 3.1.12 [...] ⁶
- 3.1.13 The Applicants consider that there is a need to seek to address the legal uncertainty as to whether compliance with the Code might give rise to a challenge under the Ordinance, while noting that non-compliance would lead to the Monetary Authority considering whether it is necessary to take supervisory actions against the AIs concerned under the Banking Ordinance.
- 3.2 Description of the products and services to which the agreement relates.**
- 3.2.1 As detailed above, AIs must comply with the Code in dealing with and providing banking services to their customers, such as current accounts, savings and other deposit accounts, loans and overdrafts, card services, payment services, electronic banking services and stored value card services.

⁵ Section 22.5 was resumed as amended in June 2017.

⁶ Please refer to Annexes 6 and 7 respectively.

PART 4 REASONS FOR THE APPLICATION

4.1 Application of the First Conduct Rule

- 4.1.1 This Application is made in respect of the Code (including any future changes as may be required and/or endorsed by the HKMA, acting in accordance with its statutory mandate, as described at paragraph 4.3.14). As mentioned above, the Code may be characterised as a decision of an association of undertakings for the purposes of section 6(1)(c) of the Ordinance. The First Conduct Rule may apply insofar as the Applicants giving effect to the Code could potentially be seen to have the object or effect of preventing, restricting or distorting competition in Hong Kong.
- 4.1.2 The Applicants acknowledge that a limited number of provisions of the Code could be viewed as potentially raising competition concerns insofar as they touch upon pricing. For example, certain of the Suspended Provisions (e.g. sections 5.10, 6.5, 12.3, 22.11, 26.9, 26.12, 26.15(e) and (f), 28.2, 28.3, 28.5, 34.3, 52.1 of the Code) abolish fees altogether or set maximum fees with the aim of protecting consumers, which inevitably relate to prices or fees. At paragraph 3.7 of the Guideline on the First Conduct Rule, the Commission cites agreements between competitors to fix prices as *"agreements which the Commission considers to have the object of harming competition"*. Conceptually, giving effect to the Code, which outlines certain charges that should not be imposed by AIs and sets out certain circumstances in which card issuers should not impose fees, could be seen to restrict the independence of AIs to determine their own charges (albeit that the price would be set at zero).
- 4.1.3 However, as noted at paragraph 3.1.11, the Code does not have the object of harming competition, as there is an absence of any anti-competitive intention or purpose. Furthermore, the Applicants believe there are good arguments to support the conclusion that none of the provisions of the Code has any anti-competitive effect on the market in Hong Kong.
- 4.1.4 The Applicants therefore wish to obtain legal certainty that, should the Commission consider that competition concerns could arise from any of the Code provisions, it is also of the view that the Legal Requirement Exclusion applies. For the avoidance of doubt, the Applicants do not consider that there has been a contravention of the First Conduct Rule and the purpose of this Application is to bring legal certainty to the Applicants and the wider banking community that their continued compliance with the Code (in particular, the Suspended Provisions) will not contravene the Ordinance.

4.2 Applicability of the Legal Requirement Exclusion

- 4.2.1 As explained above, all AIs are expected and are required in effect to comply with the Code, as non-compliance could lead to legal and regulatory consequences. As such, the Applicants are seeking a Section 9 Decision that, in any event, the Legal Requirement Exclusion should apply to the Code and thus the AIs' compliance with the Code is excluded from the application of the First Conduct Rule.

4.3 Satisfaction of the criteria for the Legal Requirement Exclusion

4.3.1 The Legal Requirement Exclusion at section 2 of Schedule 1 to the Ordinance provides that:

“(1) The first conduct rule does not apply to an agreement to the extent that it is made for the purpose of complying with a legal requirement.

(2) The second conduct rule does not apply to conduct to the extent that it is engaged in for the purpose of complying with a legal requirement.

(3) In this section—

“legal requirement” (法律規定) means a requirement—

(a) imposed by or under any enactment in force in Hong Kong; or

(b) imposed by any national law applying in Hong Kong.”

4.3.2 The Commission has set out its approach to the Legal Requirement Exclusion in paragraphs 3.2 and 3.3 of the Annex to the Guideline on the First Conduct Rule, namely that:

“3.2 The Commission considers that for this general exclusion to apply, the relevant legal requirement must eliminate any margin of autonomy on the part of the undertakings concerned compelling them to enter into or engage in the agreement or conduct in question.

3.3 Where an undertaking has some scope to exercise its independent judgment on whether it will enter into an agreement or engage in the relevant conduct, the general exclusion for complying with legal requirements will not be available. Accordingly, if the relevant agreement or conduct is merely facilitated or encouraged by an enactment in force in Hong Kong or national law applying in Hong Kong, the exclusion will not apply. Equally, approval or encouragement on the part of the public authorities will not suffice for this general exclusion to apply.” [Emphasis added]

4.3.3 It follows from the above that the Legal Requirement Exclusion excludes the application of the First Conduct Rule from agreements that are made for the purpose of complying with a legal requirement (i.e. a requirement under a Hong Kong statute or National Law). We understand that the purpose of the Legal Requirement Exclusion is to prevent any conflict between compliance with competition law, on one hand, and a legal obligation or requirement on the other. As explained in paragraph 3.1.10 above, this is precisely the situation in which the Applicants (and AIs more generally) presently find themselves.

4.3.4 Section 2(3) of Schedule 1 defines “legal requirement” as “a requirement imposed by or under any enactment in force in Hong Kong”. The Applicants submit that, in reality, the need to comply with the Code (in other words, giving effect to the provisions of the

Code) stems from a legal requirement that falls within this definition, in the following way.

- (a) The relevant "enactment in force" is the Banking Ordinance (Cap. 155).
- (b) In practice, compliance with the Code is a requirement under the Banking Ordinance in the sense that AIs have no margin of autonomy but must comply with the Code, because any non-compliance with the Code will call into question whether the AI concerned meets the minimum criteria for authorization under the Banking Ordinance. This could lead to the Monetary Authority's exercise of his statutory powers under the Banking Ordinance including suspending or revoking the AI's authorization in the most serious case of non-compliance (as discussed in more detail in paragraph 4.3.20 onwards below).
- (c) The requirement from the Monetary Authority to comply with the Code, in relation to AIs' compliance with the Code, in effect amounts to imposing a legal requirement on AIs to comply with the Code, thus constituting a requirement "*imposed [...] under any enactment in force in Hong Kong*" within the definition of the Legal Requirement Exclusion (emphasis added). As a matter of textual interpretation, "under" an enactment is wider than "by" an enactment. There is overseas precedent to show that the phrase "under an enactment" can be interpreted as referring to an act or a decision made in pursuance of or under the authority of an enactment, which in our case could refer to the Monetary Authority's statutory powers to impose supervisory sanctions under the Banking Ordinance in the event of failure to comply with the Code.

4.3.5 The application of the Legal Requirement Exclusion to the Code will not undermine the purpose and integrity of this exclusion in dis-applying the conduct rules only where an undertaking is genuinely required (without any room for discretion) to act in a way that is inconsistent with the Ordinance. On the contrary, the Code is a genuine requirement to which all AIs are subject; and compliance with the Code is monitored and could be enforced, if the Monetary Authority considers necessary or appropriate, through exercise of his statutory powers under the Banking Ordinance. This leaves AIs with no room for discretionary behaviour, autonomous act or exercise of independent judgment but to comply with the Code.

4.3.6 The Code is accessible by the public through the website of HKMA (in addition to HKAB's and DTCA's websites) and is endorsed by the HKMA, which, as explained below, applies its broad supervisory framework to the compliance of the Code by AIs. This is illustrated by the robust compliance and monitoring processes underpinning the Code, which, among other things, require AIs to perform ongoing self-assessment and reporting on their compliance with the Code and make self-certification to the Monetary Authority on compliance with the Code periodically. More importantly, AIs could be subject to a number of potential supervisory actions under the Banking Ordinance for failure to comply with the provisions of the Code, having regard to the seriousness of the failure to comply, whether the failure was deliberate or an unintentional or unusual

occurrence, and whether it could be detrimental to the interests of depositors or potential depositors.⁷

- 4.3.7 In light of the above, AIs, in practice, have no “*margin of autonomy*”, nor any scope to exercise “*independent judgment*”, in respect of their compliance with the provisions of the Code. Giving effect to the Code is de facto mandatory in nature given the potential consequences of non-compliance, in light of the statutory powers that may be exercised by the Monetary Authority under the Banking Ordinance. The Code, and AIs giving effect to it, should therefore be excluded from the application of the First Conduct Rule by virtue of the Legal Requirement Exclusion.

The Code is subject to HKMA's review and endorsement

- 4.3.8 The HKMA has been involved in the establishment of the Code from the outset. In 1995, the HKMA required HKAB and the banking industry to develop a Code of Banking Practice in Hong Kong and, in February 1996, a working committee was set up with representatives from HKAB and DTCA, convened by the HKMA. Following work by this working committee and approval of the text by the HKMA, the first version of the Code was jointly released by HKAB and DTCA in July 1997. Attached at Annex 8 is the press release issued by HKAB, DTCA and the HKMA announcing issuance of the first version of the Code in July 1997.
- 4.3.9 The first version followed consultation with industry bodies, regulators, Government and political parties amongst whom it had a wide level of support. Subsequent versions involved consultation with HKAB, DTCA, the Consumer Council and most recently, in respect of specific provisions, the Privacy Commissioner for Personal Data. In practice, whenever the HKMA so requests, revisions of the Code will be issued following similarly extensive consultations, review and final endorsement by the HKMA.
- 4.3.10 Following a strengthening of the provisions of the Code in 2001, at the request of the HKMA⁸, and a further revision issued with the endorsement of the HKMA in 2008,⁹ the most recent version of the Code was issued, again with the endorsement of the HKMA, in 2015. This version of the Code was aimed at providing wider protection to customers and contained enhancements (notably with respect to card-related provisions) to more closely align with international standards on financial consumer protection.¹⁰ Furthermore, the HKMA issued a letter to all AIs dated 14 February 2017 (see Annex 14), in which it clarified its supervisory expectation in relation to sections 22.5 and 22.12 of the Code and requested that HKAB and DTCA arrange for the amendment of these

⁷ Please refer to paragraph 4.3.20 and onwards below.

⁸ A copy of a press release issued by the HKMA, HKAB and DTCA of 15 November 2001 announcing issuance of the revised version of the Code is annexed (see Annex 9).

⁹ A copy of a press release issued by HKAB on 31 December 2008 announcing issuance of the revised version of the Code is annexed (see Annex 10).

¹⁰ A copy of a press release issued by the HKMA of 6 February 2015 announcing issuance of the revised version of the Code is annexed (see Annex 11)

two provisions in the current version of the Code with immediate effect.¹¹ This further demonstrates the degree of control which the HKMA has over the precise wording of the Code and the elimination of any margin of autonomy on the part of the HKAB, DTCA and the AIs over the content and drafting of the provisions of the Code.

- 4.3.11 All of these versions of the Code were issued at the request of (and in some cases, amended by) the HKMA and, in each case, the text was subject to its review and endorsement. The recent letter of 14 February 2017 is a clear example of HKMA's supervisory power to prescribe, oversee and amend the drafting of the Code provisions. The issuance of the letter demonstrates the HKMA's regular supervision over compliance with the Code and its resolve to exercise such power as and when it considers appropriate (e.g. in response to enquiries and complaints). Therefore, the Code has always been subject to extensive regulatory input and consultation, and should appropriately be considered to be an important element of the regulatory framework for AIs.

Rationale for the Code to be an "industry code"

- 4.3.12 [...]Even the form that the Code takes was the deliberate intention of the HKMA – as understood by the Applicants, it prefers the Code taking its current form, instead of being prescribed in regulations or legislation. The HKMA promotes and encourages proper standards of conduct and sound and prudent business practices among AIs. The guiding principle adopted by the HKMA is that AIs are encouraged to treat customers fairly. This is mainly achieved through AIs' compliance with the practices currently embodied in the Code which applies to all AIs.
- 4.3.13 The Applicants understand that the HKMA attaches great importance to fostering a customer-centric culture with which AIs will treat customers fairly as a matter of ethics, above and beyond strict compliance, since this would be a very effective way to ensure customer interests are fully taken into account in the day-to-day business operations of AIs. As understood by the Applicants, the HKMA endorses the Code in the same way and with the same expectation for full compliance as per the statutory guidelines were issued by the Monetary Authority under the Banking Ordinance.¹² Any failure to comply with the Code or the statutory guidelines will equally call into question the compliance of the AI concerned; and the AI concerned could potentially face such supervisory sanctions as may be taken by the Monetary Authority, as appropriate, under the Banking Ordinance (see paragraph 4.3.20 onwards). [...] As such, whilst the framework of the Code itself is not statutory, compliance with its provisions is overseen by the framework of the Banking Ordinance and in practice is tantamount in effect to a legal requirement for the purposes of the Ordinance.

The Monetary Authority continuously monitors compliance

- 4.3.14 The Code is used by the Monetary Authority as part of its ongoing supervision regime of AIs and, in particular, in discharge of the Monetary Authority's functions under section 7

¹¹ A copy of the letter dated 14 February 2017 issued by the HKMA to AIs is annexed (see Annex 14).

¹² Pursuant to sections 7(3) or 16(10) of the Banking Ordinance

of the Banking Ordinance, including those under section 7(2)(b), (c),(d) and (g), set out below.

"(b) take all reasonable steps to ensure that the principal places of business, local branches, local offices, overseas branches and overseas representative offices of all authorized institutions and local representative offices are operated in a responsible, honest and business-like manner;

(c) promote and encourage proper standards of conduct and sound and prudent business practices amongst authorized institutions and money brokers;

(d) suppress or aid in suppressing illegal, dishonourable or improper practices in relation to the business practices of authorized institutions;

(g) take all reasonable steps to ensure that any banking business, any business of taking deposits, or any other business, carried on by an authorized institution is carried on –

(i) with integrity, prudence and the appropriate degree of professional competence; and

(ii) in a manner which is not detrimental, or likely to be detrimental, to the interests of depositors or potential depositors."

4.3.15 The Monetary Authority expects all AIs to comply with the provisions of the Code and[...] the Monetary Authority will consider taking such supervisory action in relation to any non-compliance with the Code as he considers appropriate. In this regard, the Monetary Authority is empowered under the Banking Ordinance to take a range of supervisory actions against AIs as may be appropriate. In considering what supervisory action to take in respect of non-compliance with the Code (see discussion in paragraphs 4.3.20 to 4.3.23 below), the Monetary Authority would have regard to the seriousness of the non-compliance, whether the non-compliance was deliberate or an unintentional or unusual occurrence, and whether it could be detrimental to the interests of depositors or potential depositors.

4.3.16 In implementing these supervisory actions over the compliance of AIs with the Code and the discharge of the Monetary Authority's statutory functions, as mentioned in paragraph 4.3.14 above, there are robust processes for the Monetary Authority to ensure the full compliance of AIs with the Code, including self-assessment by AIs, obligation on AIs to report any non-compliance, on-site examinations and off-site reviews by the Monetary Authority, and procedures allowing customers to lodge complaints against AIs with the Monetary Authority.

4.3.17 Self-assessment surveys are conducted and assessed by AIs under a very strict and robust governance structure. These assessments are required to be carried out by a designated department within an AI, such as the internal audit or the compliance function, before being approved by the AI's senior management.

- 4.3.18 Details of non-compliance are required to be provided, indicating, amongst other things: the provisions which were not complied with; details of the non-compliance; action taken to rectify the non-compliance; and the target date for compliance.
- 4.3.19 The HKMA's annual reports provide statistics as to the overall results of the self-assessment programmes for the years from 2002 to 2013.¹³ From 2002 to 2008, there was a substantial degree of compliance, but with some instances reported of non-compliance. From 2009 to 2013, all AIs reported full compliance or almost full compliance with only a few instances of non-compliance. These statistics demonstrate the powerful deterrent effect of the Monetary Authority's supervisory action, which fosters strict compliance with the Code by AIs.

Broad range of potential consequences for non-compliance with the Code

- 4.3.20 In practice, in case there is any incident of non-compliance with the Code identified in the above monitoring process, the Monetary Authority will follow up with the AI concerned to ensure timely rectification and enhancement of relevant systems and controls to avoid recurrence of similar non-compliance. In the event that material deficiencies are not adequately addressed by an AI in a timely manner, the Monetary Authority can exercise a range of supervisory actions under the Banking Ordinance, where appropriate. In considering what supervisory action to take in respect of a breach of the Code, the Monetary Authority would have regard to the seriousness of the breach, whether the breach was deliberate or an unintentional or unusual occurrence, and whether it could be detrimental to the interests of depositors or potential depositors.
- 4.3.21 In the extreme case, if an AI were to blatantly disregard the provisions of the Code, the Monetary Authority would assess whether the business of the AI was being conducted with integrity, prudence and the appropriate degree of professional competence, which is one of the minimum authorization criteria set out in the Seventh Schedule of the Banking Ordinance. Paragraph 97 of the Guideline on the Minimum Criteria for Authorization issued by the Monetary Authority under section 16(10) of the Banking Ordinance (the "**Guideline on Authorization Criteria**") provides that "*Integrity is concerned with the manner in which the business of the institution is carried on and is distinct from the question of whether its directors, controllers, chief executives and executive officers are fit and proper persons...doubts may be raised if the institution fails to comply with recognised ethical standards of conduct such as those embodied in various codes of conduct (e.g. the Code of Banking Practice issued jointly by the Hong Kong Association of Banks and the DTC Association and endorsed by the HKMA)...*" (emphasis added). The Guideline on Authorization Criteria further stipulates that the criteria in the Seventh Schedule of the Banking Ordinance are "*continuing in nature*". In other words, they apply to institutions "*not only at the time of authorization but also thereafter*" and it follows that "*failure to meet the criteria by existing authorized institutions would be a ground for revocation of authorization...*"¹⁴ The Monetary Authority would determine whether to suspend or revoke the authorization of an AI under sections 22, 24 and 25 of the Banking Ordinance – the ultimate sanction for an

¹³ Relevant extracts from the HKMA's annual reports are attached as Annex 13.

¹⁴ See Guideline on Authorization Criteria. Paragraph 5(a).

AI, which underlines how compliance with the Code is tantamount to a legal requirement.

- 4.3.22 Since revocation of an AI's authorization in the event of non-compliance with the Code goes to the heart of any AI's ability to conduct business in the banking industry, the threat of this sanction under the Banking Ordinance renders AIs being obliged to treat compliance with the Code in the same fashion as compliance with a "condition" of its authorization. In this context, the fact that AIs treat compliance with the Code as seriously as compliance with a condition of authorization makes it clear that, in effect, compliance with the Code is a legal requirement imposed under the Banking Ordinance, and thus a "legal requirement" for the purposes of the Ordinance.
- 4.3.23 In addition to the minimum criteria for authorization set out in the Seventh Schedule, the Eighth Schedule to the Banking Ordinance sets out the grounds pursuant to which the Monetary Authority may revoke or suspend an AI's authorization under sections 22, 24 and 25 of the Banking Ordinance. Some relevant grounds for revocation or suspension include situations where the Monetary Authority is satisfied that: the business of the AI is not being conducted with integrity, prudence and the appropriate degree of professional competence; the interests of depositors or potential depositors of the AI are in any other manner threatened by the AI continuing to be authorized; or the AI engages in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre.

Conclusion

- 4.3.24 In conclusion, although the Code is described as a voluntary code of conduct in form, it is clear from the overall supervisory framework surrounding the Code that compliance with the Code is mandatory in substance. AIs are subject to a monitoring and reporting system in respect of their compliance with the Code and are required to conduct self-assessment on compliance with the Code periodically, as well as regular examinations by the Monetary Authority. Any failure to comply with the Code may expose the AI concerned to the possibility of being subject to the Monetary Authority's exercise of his statutory powers.
- 4.3.25 The range of potential sanctions, as described above, exercises a strong deterrent effect on AIs to avoid failing to comply with the Code. In light of the compliant nature of financial institutions, AIs are left with no choice other than strict and full compliance with the Code.
- 4.3.26 When analysing these statutory powers, together with the functions of the Monetary Authority under section 7 of the Banking Ordinance, the combined effect of the above measures is that they *"eliminate any margin of autonomy"* on the part of the AIs with respect to compliance with the Code. [...] Compliance with the Code is not *"merely facilitated or encouraged"*, but that the Monetary Authority instead expects full compliance with the Code. The Commission's requirements for the application of the Legal Requirement Exclusion set out in the Annex to the Guideline on the First Conduct Rule are therefore satisfied.

4.3.27 It follows from the above that AIs give effect to the Code in order to comply with a legal requirement, namely the Monetary Authority's statutory powers. As a result, the Applicants submit that the Code should be excluded from the application of the First Conduct Rule by virtue of the Legal Requirement Exclusion.

4.3.28 [...]

PART 5 SUITABILITY FACTORS

5.1 *Applicability of the suitability factors*

- 5.1.1 The Applicants submit that the factors listed in section 9 of the Ordinance are met, namely that:
- (a) this Application poses a novel and unresolved question of wider importance and public interest in relation to the application of the Legal Requirement Exclusion;
 - (b) there is presently no clarification in existing case law or decisions of the Commission;
 - (c) it is possible to make a decision on the basis of the information provided in this Application; and
 - (d) this Application does not concern hypothetical questions or agreements.
- 5.1.2 The application of the Ordinance to the Code has never before been considered and the need to reconcile compliance with the Ordinance, as well as the entirety of the Code (as expected by the HKMA), demonstrates the need for clarity in this regard. It is important for the entire banking industry to have legal certainty that compliance with the Code does not give rise to a challenge under the Ordinance.
- 5.1.3 Uncertainty in the banking sector, particularly surrounding how the Ordinance should be applied in the context of consumer protection issues, is clearly a matter of pressing concern that needs to be addressed swiftly. The importance of legal certainty in the banking system and the Code's central role in regulating AIs cannot be overstated.
- 5.1.4 Given the Code has the aim of enhancing protection to consumers of banking services and has promotion of competition as one of its consumer protection general principles, it is considered to be in the public interest that the availability of the Legal Requirements Exclusion be confirmed by a Section 9 Decision to the effect that compliance with the Code in its existing form, and in any such revised form that should be required and endorsed by the HKMA in the future, is excluded from the application of the First Conduct Rule.

**PART 6 SUBMISSIONS OR APPLICATIONS TO COMPETITION AUTHORITIES IN
OTHER JURISDICTIONS**

6.1 *Submissions in other jurisdictions*

- 6.1.1** No submission or application has been made to a competition authority in another jurisdiction in relation to the Code.

PART 7 OTHER INFORMATION**7.1 *Other information and supporting documentation***

- 7.1.1 Supporting information and documentation referred to throughout the Application is provided in the annexes to the Application. This includes background information on the Applicants, a copy of the Code, copies of relevant communications in relation to the Code and certain statistics.
- 7.1.2 Should the Commission require further information or clarification, the Applicants would be happy to assist.

7.2 *Notification to relevant parties*

- 7.2.1 HKAB and DTCA are aware of this Application and support it in its entirety. Each of them has been provided with a copy of the confidential version.

PART 8 SIGNATURE AND DECLARATION**8.1 Signature**

[...]

[Authorised representative of Bank of China (Hong Kong) Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

I believe that, as regard, this Application and all supporting documentation attached hereto:

- (a) all information provided (except Annexes 1 and 3, for which this Applicant is making this declaration only in respect of its own information) is true, complete and correct;
- (b) all estimates are identified as such and are best estimates of the Applicants based on the underlying facts; and
- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of Bank of China (Hong Kong) Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of Bank of China International Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (b) all estimates are identified as such and are best estimates of the Applicants based on the underlying facts; and
- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of Bank of China International Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of The Bank of East Asia, Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (b) all estimates are identified as such and are best estimates of the Applicants based on the underlying facts; and
- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of The Bank of East Asia, Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of BNP Paribas]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of BNP Paribas]

Date: _____

8.1 Signature

[...]

[Authorised representative of Citibank (Hong Kong) Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of Citibank (Hong Kong) Limited]

Date: _____

8.1 Signature

[...]

 [Authorised representative of Dah Sing Bank, Limited]
8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of Dah Sing Bank, Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of DBS Bank (Hong Kong) Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of DBS Bank (Hong Kong) Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of Hang Seng Bank, Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of Hang Seng Bank, Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of The Hongkong and Shanghai Banking Corporation Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of The Hongkong and Shanghai Banking Corporation Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of Industrial and Commercial Bank of China (Asia) Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of Industrial and Commercial Bank of China (Asia) Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of JPMorgan Chase Bank, National Association]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of JPMorgan Chase Bank, National Association]

Date: _____

8.1 Signature

[...]

[Authorised representative of Orix Asia Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (b) all estimates are identified as such and are best estimates of the Applicants based on the underlying facts; and
- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of Orix Asia Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of Public Finance Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (b) all estimates are identified as such and are best estimates of the Applicants based on the underlying facts; and
- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of Public Finance Limited]

Date: _____

8.1 Signature

[...]

[Authorised representative of Standard Chartered Bank (Hong Kong) Limited]

8.2 Declaration

I understand that under section 172 of the Ordinance, it is an offence to provide any information that is false or misleading in a material particular to the Commission under the Ordinance if the person providing it knows that it is false or misleading, or is reckless as to whether it is. I also understand that if the person committing the offence is a body corporate, its officers may be guilty of an offence under section 175 of the Ordinance.

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- (b) all estimates are identified as such and are best estimates of the Applicants based on the underlying facts; and
- (c) all opinions expressed are honestly held.

Signature: [...]

Name: [Authorised representative of Standard Chartered Bank (Hong Kong) Limited]

Date: _____

List of Annexes Attached to Form AD

Annex		Description
1	Part 1	[...]
1	Part 2	[...]
1	Part 3	[...]
2		Code of Banking Practice
3		[...]
4		List of licensed banks, restricted licence banks and deposit taking companies as of 30 November 2017
5		[...]
6		[...]
7		[...]
8		Press release issued by HKAB, DTCA and the HKMA on 11 July 1997
9		Press release issued by the HKMA, HKAB and DTCA on 15 November 2001
10		Press release issued by HKAB on 31 December 2008
11		Press release issued by the HKMA on 6 February 2015
12		[...]
13		Relevant extracts from the HKMA's annual reports in relation to overall results of AI self-assessment programmes for the years 2002 to 2013
14		The HKMA's letter dated 14 February 2017
15		[...]

Annex 1 (Part 1)

(REDACTED)

Annex 1 (Part 2)

(REDACTED)

Annex 1 (Part 3)

(REDACTED)

Annex 2

CODE OF BANKING PRACTICE



The DTC Association

Code of Banking Practice

February 2015

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PART I - INTRODUCTION

1. Status of the Code of Banking Practice

- 1.1. This Code of Banking Practice (Code) is issued jointly by the Hong Kong Association of Banks (HKAB) and the DTC Association (DTCA), i.e., the industry Associations, and endorsed by the Hong Kong Monetary Authority (HKMA).
- 1.2. This is a non-statutory Code issued on a voluntary basis. It is to be observed by authorized institutions (institutions) in dealing with and providing services to their customers. It covers specifically banking services such as current accounts, savings and other deposit accounts, loans and overdrafts, card services, electronic banking services and stored value card services. However, the principles of the Code apply to the overall relationship between institutions and their customers in Hong Kong. Institutions' subsidiaries and affiliated companies controlled by them which are not institutions and are not licensed, regulated or supervised by any financial regulators in Hong Kong should also observe the Code where applicable when providing banking services in Hong Kong, such as lending, remittance or gold bullion service.
- 1.3. The recommendations set out in this Code are supplementary to and do not supplant any relevant legislation, codes, guidelines or rules applicable to institutions authorized under the Banking Ordinance (Cap.155).
- 1.4. HKAB and DTCA expect their respective members to comply with the Code. HKMA expects all institutions to comply with the Code and will monitor compliance as part of its regular supervision.
- 1.5. The Code is subject to review and revision from time to time. Unless otherwise shown, this revised edition is effective from 6 February 2015. Institutions should take active steps to comply with the revised provisions as quickly as possible. They should achieve full compliance within 6 months of the effective date. However, a further 6 months will be allowed for compliance with those revised provisions of the Code which require system changes.

2. General Principles

2.1. Equitable and Fair Treatment of Customers

Institutions should treat all customers equitably, honestly and fairly at all stages of their relationship with the institutions. Treating consumers fairly should be an integral part of the good governance and corporate culture of all institutions and their authorized agents. Special attention should be dedicated to the needs of vulnerable groups.

2.2. Disclosure and Transparency

Institutions and their authorized agents should set out and explain clearly the key features, risks and terms of the products, fees, commissions or charges applicable, and make available the details of these to customers. Additional disclosures, including appropriate warnings, should be developed to provide information commensurate with the nature and risks of the products and services. They should also provide information on conflicts of interest associated with the use by institutions of their authorized agents through which any product is sold. Appropriate information should be provided at all stages of the relationship with the customer. All financial promotional material should be accurate, honest, understandable and not misleading. Standardised pre-contractual disclosure practices should be adopted where applicable and practicable to allow comparisons between products and services of the same nature.

Where advice is provided, the advice should be as objective as possible and should in general be based on the customer's profile considering the complexity of the product, the risks associated with it as well as the customer's financial objectives, knowledge, capabilities and experience.

Institutions should inform customers that it is important to provide institutions with relevant, accurate and available information.

2.3. Financial Education and Awareness

Recognising that customers have their responsibilities in enhancing financial literacy, institutions should join force with the government, regulatory bodies and other relevant stakeholders to promote financial education and awareness and help existing and future customers to develop the knowledge, skills and confidence appropriately to understand risks, including financial risks and opportunities, make informed choices, know where to go for assistance, and take effective action to improve their own financial well-being. The provision of broad based financial education and information to deepen consumer financial knowledge and capability should be promoted, especially to vulnerable groups. Clear information on consumer protection, rights and responsibilities should be easily accessible by customers.

2.4. Responsible Business Conduct of Institutions and Authorized Agents

Institutions and their authorized agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer protection. Institutions should also be responsible and accountable for the actions of their authorized agents and third party service providers. Depending on the nature of the transaction and based on information primarily provided by customers, institutions should assess the financial capabilities and needs of their customers before offering them a product, advice or service. Staff (especially those who interact directly with customers) should be properly trained and qualified. Institutions and their authorized agents should endeavour to avoid conflicts of interest. When this cannot be avoided, they should ensure proper disclosure, have in place internal mechanisms to manage such conflicts, or decline to provide the product, advice or service. The remuneration structure for staff of institutions and, where appropriate, their authorized agents should be designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest.

2.5. Protection of Customer Assets against Fraud and Misuse

Institutions should have in place relevant information, control and protection mechanisms to protect customers' deposits, savings, and other similar financial assets appropriately and with a high degree of certainty, including against fraud, misappropriation or other misuses.

2.6. Protection of Consumer Data and Privacy

Institutions should have in place appropriate control and protection mechanisms to protect customers' financial and personal information. These mechanisms should comply with all applicable legislation and in particular should define the purposes for which the data may be collected, processed, held, used and disclosed. The mechanisms should also acknowledge the rights of customers to be informed about data-sharing, to access data and to obtain the prompt correction and/or deletion of inaccurate, or unlawfully collected or processed data.

2.7. Complaints Handling and Redress

Institutions and, where appropriate, their authorized agents should provide customers with reasonable channels to submit claims, make complaints and seek redress that are accessible, fair, accountable, timely and efficient. Such channels should not impose unreasonable cost, delays or burdens on customers.

2.8. Competition

Institutions should allow customers to search, compare and, where appropriate, switch between products and institutions easily and at reasonable and disclosed costs.

3. Objectives

3.1. The Code is intended -

- (a) to promote good banking practices by setting out the minimum standards which institutions should follow in their dealings with customers;
- (b) to increase transparency in the provision of banking services so as to enhance the understanding of customers of what they can reasonably expect of the services provided by institutions;
- (c) to promote a stronger culture of treating customers fairly which will ensure customers' interests are taken into account by institutions in their business dealings with customers; and
- (d) through the above, to foster customer confidence in the banking system.

3.2. The above objectives are to be achieved -

- (a) having regard to the need for institutions to conduct business in accordance with prudential standards in order to preserve the stability of the banking system;
- (b) while striking a reasonable balance between customer rights and efficiency of banking operations.

4. Enquiries

4.1. Enquiries about the Code should be addressed to HKAB or DTCA. Their current addresses and telephone numbers are as follows -

The Hong Kong Association of Banks
Room 525, Prince's Building
Central
Hong Kong
Tel: 2521 1160 or 2521 1169
Fax: 2868 5035
Website: www.hkab.org.hk

The DTC Association
Unit 1704
17/F Bonham Trade Centre
50 Bonham Strand East
Sheung Wan
Hong Kong
Tel: 2526 4079
Fax: 2523 0180
Website: www.dtca.org.hk

4.2. The Code can be viewed or downloaded from the websites of HKAB and DTCA. All institutions will make copies of the Code available to customers or tell them how to get copies.

PART II - RECOMMENDATIONS ON BANKING PRACTICE

Chapter 1 - Relationship between Institutions and Customers

5. Terms and Conditions

- 5.1. Institutions should make readily available to customers or prospective customers written terms and conditions of a banking service. Institutions should be prepared to answer any queries of customers or prospective customers relating to terms and conditions. In cases where the query relates to a service provided by a third party service provider, institutions may, where necessary, refer the query to the relevant third party service provider after obtaining the customer's consent or direct the customer to contact the third party service provider. Institutions should thereafter provide assistance to the customer if the customer so requests.
- 5.2. Institutions should provide written terms and conditions of a banking service to prospective customers upon application of the banking service as far as possible. Where the provision of written terms and conditions is not practicable at the point of sale, institutions should provide key terms and conditions orally to prospective customers and provide a full set of the terms and conditions to the customers as soon as practicable afterwards. Where the provision of written or oral terms and conditions is not practicable at the point of sale, institutions should inform prospective customers where they can find the terms and conditions (including providing a link to the institution's website) and advise them to read and understand the terms and conditions before applying for the banking service and provide a full set of terms and conditions as soon as practicable afterwards.
- 5.3. The terms and conditions should provide a fair and balanced description of the relationship between the customer and the institution.
- 5.4. The terms and conditions should be available in both Chinese and English unless the banking service is governed by law other than that of Hong Kong or there is little or no demand for bilingual information. Institutions should use plain language and avoid complex legal and technical terms wherever practicable. Where legal and technical language is used, appropriate explanation should be provided where practicable. The terms and conditions should be presented in a reasonable layout and font size that is readily readable.
- 5.5. The terms and conditions should, where applicable, highlight any fees, charges, penalties and relevant interest rates (or the basis on which these will be determined) and the customer's liabilities and obligations in the use of a banking service.
- 5.6. In drawing up terms and conditions for banking services, institutions should have due regard to applicable laws in Hong Kong, including, in particular, the Personal Data (Privacy) Ordinance (Cap. 486), the Control of Exemption Clauses Ordinance (Cap.71), the Unconscionable Contracts Ordinance (Cap. 458), and the Supply of Services (Implied Terms) Ordinance (Cap. 457) and any other prevailing consumer protection legislation.
- 5.7. The terms and conditions should be consistent with this Code. Institutions should keep terms and conditions under review to ensure they are consistent with this Code.
- 5.8. Institutions should advise customers to read and understand the terms and conditions when applying for banking services.
- 5.9. Institutions should give customers 30 days' notice before any variation of the terms and conditions which affects fees and charges and the liabilities or obligations of customers takes effect (see also section 6.3 and 6.4 below). For all other variation, institutions should give customers reasonable notice before such variation takes effect. The above requirements do not apply to variations of terms and conditions in respect of cards which are covered under section 27.8 below.

- 5.10. A notice of any variation of the terms and conditions should show clearly the variation with an explanation in plain language, where appropriate and practicable, and the ways in which the customer may indicate refusal and the consequence. In case the customer decides to terminate the banking service, the institution should not charge any fees for the termination under the following conditions:
 - (a) the variation of the terms and conditions is considered key and relevant to the specific banking service;
 - (b) the variation in (a) may adversely affect the customer; and
 - (c) the customer indicates the decision to terminate the banking service within the notice period before the variation in (a) takes effect.
- 5.11. Where the variation involves substantial changes to existing terms and conditions or the changes are very complicated, the institution should provide a written summary of the key features of the revised terms and conditions.
- 5.12. Institutions should issue a full version of the revised terms and conditions to customers if there are sufficient changes to warrant it, regardless of the nature of the changes.
- 5.13. Where a customer refuses to accept the variation to the terms and conditions and chooses to terminate the banking service within a reasonable period, the institution should repay any annual or other periodic fee for that banking service on a pro rata basis, if the fee can be separately distinguished and unless the amount involved is minimal.
- 5.14. In addition to the detailed terms and conditions, institutions should make readily available to customers general descriptive information of the key features of the various banking services as indicated in the following chapters of this Code.
- 5.15. For the avoidance of doubt, sections 5.1 and 5.8 above should apply also to services or products (e.g. insurance, retirement plans and investment products) offered or provided by the institution's third-party service providers notwithstanding that the relevant terms and conditions for the service or product are set out in a separate contract between the service provider and the customer. Institutions should advise their service providers of the requirements in the remainder of this section and request them to observe these requirements as far as possible.

6. Fees and Charges

- 6.1. Institutions should make readily available to customers details of the fees and charges payable in connection with the banking services covered by the Code. All fees and charges should be of reasonable amounts. A schedule of the institution's standard fees and charges should be displayed in its principal place of business and branches and should be provided on request.
- 6.2. Details of the basis of charges for services not subject to standard fees and charges should be advised at the time the services are offered and on request.
- 6.3. Institutions should give at least 30 days' notice to affected customers before any change in the level of fees and charges (including any change in the basis on which fees and charges are determined) takes effect, except for fees and charges relating to cards (see section 27.8 below).
- 6.4. Where institutions give a notice pursuant to sections 5.9 or 6.3 above, they should adopt effective means of notification which would provide reasonable assurance that their customers will be informed of the change and which do not rely unduly on the customers' own initiative. Individual notification to customers (whether by written notice, statement insert, message in an account statement, e-mail or SMS message) is likely to be effective in achieving these objectives. But where this is not appropriate on grounds of disproportionate costs or likely ineffectiveness (for example, in the case of passbook savings accounts where the latest address of the customer may not be known to the institution), institutions may adopt other means of notification, such as one or more of the following -

- (a) press advertisement;
 - (b) prominent display of notice in banking halls;
 - (c) display of notice on ATM sites/screens;
 - (d) phone-banking message; and
 - (e) notice posted on the website of the institution.
- 6.5. Institutions should not impose administrative charges for handling cash deposits in Hong Kong dollars, except those in large quantities.
- 6.6. Institutions should inform customers of the nature and amount of charges debited to their accounts promptly after any such charge is debited unless a prior notice has already been given in accordance with section 6.7 below.
- 6.7. Institutions should give 14 days' prior notice to customers when a charge accrues on dormant accounts for the first time, and advise them of what can be done to avoid such charges or where they can obtain such information.

7. Debt Recovery Expenses

- 7.1. Any cost indemnity provision contained in the terms and conditions should only provide for the recovery of costs and expenses which are of reasonable amount and were reasonably incurred.
- 7.2. At the request of customers, institutions should provide a detailed breakdown of the costs and expenses for which customers are required to indemnify the institution.

8. Collection, Use, Holding and Erasure of Customer Information

- 8.1. Institutions should treat their customers' (and former customers') banking affairs as private and confidential.
- 8.2. Institutions should at all times comply with the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) in the collection, use, holding and erasure of customer information. They should also comply with any relevant codes of practice issued or approved by the Privacy Commissioner for Personal Data giving practical guidance on compliance with the PDPO.
- 8.3. On or before collecting customers' personal information, institutions should notify customers as specifically as possible of the classes of person to whom they may wish to make disclosure of customer information and the purpose of such disclosure. Classes of person about which customers should be specifically notified include among others -
- (a) debt collection agencies;
 - (b) data processors to which the processing of personal information is to be, or may be, outsourced;
 - (c) credit reference agencies;
 - (d) subject to section 8.4 below, persons to whom customers' contact details may be disclosed for marketing purposes including, related companies within the same group and other persons (classified in specific terms, such as co-branding partners of the institution or third party loyalty programme providers which in each case should be shown in application forms/leaflets for the relevant services or products provided to customers); and

- (e) such other persons to whom disclosure may be required by applicable laws or regulatory guidelines issued from time to time.
- 8.4. Institutions should not, without the prescribed consent of their customers, provide bankers' references in respect of a customer. An institution that intends to use customer information for direct marketing purposes shall comply with the PDPO and any relevant codes of practice.
- 8.5. Where personal information is used by an institution for its own marketing purposes for the first time, the institution should inform the customer that the institution will, without charge to the customer, cease to so use the personal information if the customer so requests.
- 8.6. Institutions should remind customers at least once every year or by including a standard notice in their marketing materials of the right to make the request referred to in section 8.5 above.
- 8.7. When a customer objects to the disclosure of the information referred to in section 8.3(d) above or refuses to give the consent or an indication of no objection or withdraws any consent or indication of no objection required under the PDPO, the institution concerned should give effect to such objection, refusal or withdrawal and should not refuse to provide that customer with basic banking services.
- 8.8. Where personal information is transferred to a third party service provider, for example, as part of an outsourcing arrangement, institutions should satisfy themselves that such information will be treated as confidential and adequately safeguarded by that service provider and adopt contractual or other means to prevent any information transferred to that service provider from being the subject of unauthorized or accidental access, processing, use, erasure or loss or kept longer than is necessary for the purposes stipulated in the outsourcing agreement. Institutions should remain accountable to customers for any complaints arising out of the handling of customer information by service providers and should not attempt to disclaim responsibility for any breach of customer confidentiality by service providers.

9. Personal Referees

- 9.1. Institutions may require applicants for banking services to provide in the application forms for such services the names and particulars of persons who have agreed to act as referees for the applicant.
- 9.2. The role of referees is confined to providing, on a voluntary basis and upon request by the institution, information about the applicant in respect of the banking service specified in the application form. Referees have no legal or moral obligation to repay to the institution liabilities of a customer unless they have entered into a formal agreement to guarantee the liabilities of that customer.
- 9.3. Institutions should require applicants for banking services to confirm that they have obtained the prior consent of the referees for their names to be used. If the applicant fails to give such confirmation, institutions should not approach the referees. In such cases, institutions should decide on their own judgement whether to continue to process the application.
- 9.4. Institutions should not attempt to seek, directly or indirectly, repayment of debt from a customer's referees who are not acting as guarantors. Related to this, institutions should not pass information about referees (or third parties other than debtors or guarantors) to their debt collection agencies. If a referee is to be approached for information to help locate a debtor or guarantor, this should be done, without causing nuisance to the referee, by staff of the institution.

10. Equal Opportunity

- 10.1. Institutions should at all times comply with the relevant ordinances for the promotion of equal opportunity and any codes issued under these ordinances in the provision of banking services.
- 10.2. In respect of customers with a disability, institutions should adopt a helpful approach to making available to them appropriate means to access banking services. In particular, institutions are encouraged to install specialised machines or software and to provide physical access to facilitate the provision of banking services to persons with a disability.
- 10.3. Institutions should follow the relevant guidelines issued by the industry Associations with respect to the provision of services for visually impaired customers.
- 10.4. In addition to the statutory requirements, institutions should not discriminate against any customers simply on the ground of family status (for example, single parents), sexuality, age or race in the provision of banking services and in the quality and terms of services provided.
- 10.5. Institutions should provide suitable training to front-line staff to raise awareness of the principles and guidelines relating to equal opportunity and the provision of assistance to customers with a disability.

11. Bank Marketing

- 11.1. Institutions should exercise care in the use of direct mail and in particular should exercise restraint and be selective -
 - (a) where customers are minors; and
 - (b) when promoting loans and overdrafts.
- 11.2. Institutions should ensure that all advertising and promotional materials are fair and reasonable, do not contain misleading information and comply with all relevant legislation, codes and rules. Where benefits are subject to conditions, such conditions should be clearly displayed in the advertising materials wherever practicable. Where there are limitations as to space, e.g. in poster advertisements and television commercials, the advertisement should include reference to the means by which further information may be obtained.
- 11.3. In any marketing process and advertising and promotional material for a banking service, institutions should indicate the interest rate and relevant fees and charges normally incurred in a clear and prominent manner and that full details of the relevant terms and conditions are available on request. Where reference is made to an interest rate, institutions should also indicate the Annualised Percentage Rate (APR). To the extent practicable, the advertising and promotional materials should provide a description of the APR, e.g. an APR is a reference rate which includes the basic interest rate and other fees and charges of a product expressed as an annualised rate. Where the interest rate of a banking product is commonly quoted in terms of an annualised floating rate, institutions are not obliged to quote the corresponding APR but should show any relevant fees and charges normally incurred, such as annual fees, in a clear and prominent manner.
- 11.4. Institutions should exercise restraint in making unsolicited (that is, cold) calls to customers, taking account of the general principles stated in relevant guidelines of the HKMA pertaining to marketing activities conducted by institutions.
- 11.5. When introducing a new or enhanced service or product to customers which involves a cost or potential liability or potential risk of financial loss to them, institutions should not automatically enrol customers into the service or product, i.e. should not enrol them without the prescribed consent of the customers. In cases where the new or enhanced service or product does not involve an additional cost or potential liability or potential risk of financial loss to customers, institutions should allow a period of at least 14 days for customers to decline acceptance of the service or

product, and provide a convenient channel for customers to indicate that they decline acceptance. Institutions should notify customers explicitly that customers may decline acceptance of the service or product and the channel(s) through which customers may do so.

- 11.6. Where a “benefit” is conferred on customers involving no additional cost or potential liability or potential risk of financial loss to the customers, this should not be treated as an “enhanced service or product” in relation to which the requirements under section 11.5 above apply. In determining what constitutes a “benefit”, the following principles should be satisfied -
- (a) it does not involve present or future cost or liability or potential risk of financial loss to the customers;
 - (b) it is available to all customers who subscribe to the related service or product and it is not practicable to offer a choice to a particular customer whether to enjoy the “benefit”; and
 - (c) to enjoy the “benefit”, customers are not required to deviate from the normal usage of the related product or service but may be required to initiate action(s) that fulfils certain condition(s).
- 11.7. For the avoidance of doubt, sections 11.5 to 11.6 above do not apply to introduction of enhanced security features by institutions or other similar situations.
- 11.8. In distributing insurance products, retirement plans and investment products as agents for third party service providers, institutions should ensure that the following information is provided to customers or prospective customers separately or as part of the relevant marketing materials -
- (a) the institution is an agent of the third party service provider and the product is a product of the third party service provider but not the institution; and
 - (b) in respect of an eligible dispute (as defined in the Terms of Reference for the Financial Dispute Resolution Centre in relation to the Financial Dispute Resolution Scheme) arising between the institution and the customer out of the selling process or processing of the related transaction, the institution is required to enter into a Financial Dispute Resolution Scheme process with the customer; however any dispute over the contractual terms of the product should be resolved between directly the third party service provider and the customer.
- 11.9. While banking services provided by institutions are exempted from the Trade Descriptions Ordinance (Cap.362), in providing banking services and to the extent applicable to those services, institutions should endeavour not to engage in unfair trade practices described in Part 2B of the Trade Descriptions Ordinance, which include misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch, and wrongly accepting payment.

12. Annualised Percentage Rates

- 12.1. Institutions should where relevant quote APRs of banking products to facilitate comparison between different charging structures. Where an interest rate for a product is commonly quoted in terms of an annualised floating rate (e.g. deposits, overdrafts and mortgage loans), institutions are not obliged to quote the corresponding APR, but they should show all relevant fees and charges normally incurred related to the product in a clear and prominent manner.
- 12.2. Institutions should be prepared to respond to inquiries from customers concerning APRs and the methods of calculation, and also to advise customers the APRs of specific products. The method set out in the relevant guidelines issued by the industry Associations should be adopted in the calculation of the APR.
- 12.3. While institutions are exempt from the Money Lenders Ordinance (Cap. 163) so that the interest rates they charge are not restricted, they should not charge customers extortionate interest rates. If the APRs charged by them on regular performing loans or delinquent revolving loans or loans re-

priced due to delinquency (which are calculated in accordance with the method set out in the relevant guidelines issued by the industry Associations) or the annualized interest rates charged by them on amount in default or overdue exceed the level which is presumed to be extortionate under the Money Lenders Ordinance, they should be able to justify why such high interest is not unreasonable or unfair. Unless justified by exceptional monetary conditions, the APRs charged on regular performing loans or delinquent revolving loans or loans re-priced due to delinquency or the annualized interest rates charged on amount in default or overdue should not exceed the legal limit as stated in the Money Lenders Ordinance. For the avoidance of doubt, fees and charges in fixed amounts should not be included in the calculation of annualized interest rates. Fees and charges in fixed amounts imposed on loans in default should be reasonable.

13. Handling Customer Complaints

- 13.1. Institutions should establish procedures for handling customer complaints in a fair and speedy manner. The complaint procedures should take into account the following criteria -
 - (a) transparency - the applicable procedures should be documented;
 - (b) accessibility - the procedures should be easily invoked by customers; and
 - (c) effectiveness - the procedures should provide for the speedy resolution of disputes in a fair and equitable manner.
- 13.2. Details of how to invoke complaint procedures should be made available to customers and other interested parties such as personal referees and guarantors so that they know what steps to take if they wish to make a complaint. Institutions are encouraged to make available details of how to invoke complaint procedures in tape recording or in Braille for the visually-impaired.
- 13.3. Institutions should ensure that all their staff who deal directly with customers are made aware of the complaint procedures and are able to help customers by giving correct information about these procedures.
- 13.4. Institutions should send an acknowledgment to the complainant within 7 days upon receiving a written complaint (where the complaint cannot be resolved within 7 days) and a written response to the complaint within a reasonable period, normally not exceeding 30 days. Correspondence with the complainant should be sent in Chinese or English in accordance with the language of the complaint.

14. Closing Bank Branches

Institutions should give reasonable notice to customers before closing a branch. The notice should also be prominently displayed on the branch premises and should contain details of how the institution may continue to provide services to customers and provide contact information in case of enquiries by customers. The notice period should not be less than 2 months unless it is not practicable for institutions to provide such notice (e.g. because of unforeseen circumstances). Institutions should however provide a longer period of notice if the branch to be closed provides safe deposit box services.

15. Management of Banking Activities

- 15.1. Institutions should have proper arrangements in place for banking activities which take place at bank branches or other locations and which may have high demand to enable such activities to be conducted in a fair and orderly manner while minimising nuisance or inconvenience to customers and the public.**
- 15.2. Institutions should ensure transparency on the relevant details of such activities and provide adequate information about the arrangement, and any subsequent changes in the arrangement, to customers and/or prospective customers as early as practicable through effective means.**

Chapter 2 - Accounts and Loans

16. Opening of Accounts

- 16.1. Institutions should satisfy themselves about the identity of a person seeking to open an account in order to protect their customers, the public and themselves against misuse of the banking system.
- 16.2. Institutions should comply with the customer due diligence requirements set out in Schedule 2 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615). The HKMA's Guideline on Anti-Money Laundering and Counter-Terrorist Financing provides guidance in relation to these requirements, which include verifying the customer's identity by reference to documents, data or information provided by a reliable and independent source, such as passports or identity cards. The residential address, and information relevant to understanding the purpose and intended nature of the business relationship, such as the customer's occupation, should also be obtained.
- 16.3. Institutions should provide to customers or prospective customers upon request general descriptive information about the customer due diligence requirements.

17. Closing of Accounts

- 17.1. Either the customer or the institution may end any banking relationship at any time subject to any specific terms and conditions relating to the closing of accounts.
- 17.2. Institutions should not close a customer's account without first giving at least 30 days' notice or upon the customer's request a longer period of notice where it is practicable to do so. This will not apply in exceptional circumstances, for example, where the account is being used or is suspected of being used for illegal activities. Institutions should, where appropriate and not against the law, also consider providing a reason to the customer for closing the account.

18. Operation of Accounts

- 18.1. In addition to the detailed terms and conditions, institutions should make readily available to customers general descriptive information about the operation of their accounts. Such information should include -
 - (a) any regular fees;
 - (b) any minimum balance requirement, and the charges payable if the balance falls below the prescribed minimum;
 - (c) treatment of inactive or dormant accounts (see section 6.7 above);
 - (d) the usual time taken for clearing a cheque or a payment instrument credited to the account;
 - (e) any rights of set-off claimed by the institution (see section 19 below); and
 - (f) the closing of accounts (see section 17 above).
- 18.2. Institutions should make readily available to customers of joint accounts general descriptive information about the operation of their accounts. Such information should include -
 - (a) the rights and responsibilities of each customer of the joint account;
 - (b) the implications of the signing arrangements to be specified in the account mandate for the operation of the joint account, particularly that any transactions entered into by the authorized signatory or signatories will be binding on all account holders;

- (c) the manner in which such authorized signatory or signatories or signing arrangements can be varied;
 - (d) the nature of liability for indebtedness on a joint account; and
 - (e) any rights of set-off claimed by the institution in respect of joint accounts (see section 19 below).
- 18.3. Institutions should provide customers with statements of account at monthly intervals unless -
- (a) a passbook or other record of transactions is provided;
 - (b) there has been no transaction on the account since the last statement; or
 - (c) otherwise agreed with the customer.

Where institutions do not post or email statements of account to customers but require them to access the information electronically, institutions should advise customers concerned that the statements are available for such access.

- 18.4. Institutions should advise customers to examine their statements of account and allow a reasonable period of time of at least 90 days for them to report any unauthorized transactions in the statement. Customers should be warned that the institution would reserve the right to regard the statement as conclusive should they fail to report any unauthorized transactions within the specified period. Institutions should not, however, avail themselves of this right in relation to -
- (a) unauthorized transactions arising from forgery or fraud by any third party including any employee, agent or servant of the customer and in relation to which the institution has failed to exercise reasonable care and skill;
 - (b) unauthorized transactions arising from forgery or fraud by any employee, agent or servant of the institution; or
 - (c) other unauthorized transactions arising from the default or negligence on the part of the institution or any of its employees, agents or servants.

19. Rights of Set-off

- 19.1. The descriptive information made available to customers (see section 18 above) should include clear and prominent notice of any rights of set-off claimed by the institution over credit and debit balances in different accounts of the customer.
- 19.2. In particular, it should be made clear to customers of a joint account whether the institution claims the right to set off the credit balance in that account against the debit balance in other accounts which may be held by one or more of the holders of the joint account.
- 19.3. Institutions should set out in their terms and conditions the circumstances under which they would exercise their rights of set-off.
- 19.4. Institutions should inform the customer promptly after exercising any rights of set-off.

20. Deposit Accounts

- 20.1. Institutions should publicize or display in their principal place of business and branches the rates offered on interest-bearing accounts, except where rates are negotiable.
- 20.2. Institutions should make readily available to customers the following information on all deposit accounts -
- (a) the interest rate applicable to their accounts;
 - (b) the basis on which interest will be determined, including where relevant the APR (see section 12 above), whether interest will be paid on a simple or compound basis and the number of days in the year (in both ordinary and leap years) that will be used for the calculation;
 - (c) frequency and timing of interest payments; and
 - (d) the basis on which fees and charges on deposit accounts will be determined.
- 20.3. Institutions should provide the following additional information to customers in respect of time deposits -
- (a) the manner in which payment of interest and principal will be made and the costs associated with different methods of withdrawing such funds (for example, by means of cashier's order);
 - (b) the manner in which funds may be dealt with at maturity (for example, automatic rollover, transfer to savings or current accounts etc.);
 - (c) the interest rate, if any, that will apply on time deposits which have matured but have not been renewed or withdrawn; and
 - (d) the charges and/or forfeiture of interest which may arise from early or partial withdrawal of deposits.
- 20.4. If the date of maturity of a time deposit falls on a day which is not a business day, the deposit shall be deemed to mature on the succeeding business day.
- 20.5. Institutions should provide customers with a contemporaneous receipt or advice for deposits at call or notice or fixed deposits which should show the date of deposit. In the case of fixed deposits, the receipt or advice should specify the rate of interest and a single date of maturity. In the case of call deposits, the receipt or advice should specify the initial rate of interest and the period of notice required to uplift the deposit.
- 20.6. Institutions should inform customers of changes in interest rates (other than those which change on a daily basis) and the effective date by notices in the main offices and branches, or on the statements of account, or by advertisements in the press.
- 20.7. Institutions should at all times comply with any relevant regulatory requirements of the HKMA or the Securities and Futures Commission on risk disclosure for structured deposits (e.g. deposits or accounts involving derivatives, such as equity, index, commodity, credit, currency and interest rate-linked deposits). Institutions should make a risk disclosure statement in advertising and promotional materials relating to structured deposits. Such statement should include -
- (a) an explicit warning of the risks of dealing in the structured deposits; and
 - (b) information on whether the principal, interest or both may be subject to possible loss arising from the structured deposits.

21. Loans and Overdrafts

- 21.1. Approval of loans or overdrafts is subject to institutions' credit assessment which should take into account the applicants' ability to repay. In doing so, institutions may have regard to such factors as
- (a) prior knowledge of the customer's financial affairs gained from past dealings;
 - (b) the customer's income and expenditure;
 - (c) the customer's assets and liabilities;
 - (d) information obtained from credit reference agencies; and
 - (e) other relevant information supplied by the applicant.
- 21.2. Institutions should endeavour to ensure that a prospective borrower understands the principal terms and conditions of any borrowing arrangement. The following information should be provided upon application for a loan or overdraft or, where relevant, in a subsequent offer, and on request-
- (a) the rate of interest for the loan or overdraft, and whether it may be varied over the period of the loan;
 - (b) a brief explanation of the basis on which interest will be determined and when it will be payable, including where relevant the APRs (see section 12 above), and the number of days in the year (in both ordinary and leap years) that will be used for the calculation;
 - (c) all fees and charges which will apply, and a brief explanation of the basis on which such fees and charges will be determined and when they will be payable;
 - (d) the specified period during which the loan offer may be accepted by the prospective borrower;
 - (e) details of terms of repayment, including the loan tenor and, where relevant the instalments payable by the customer;
 - (f) any overriding right to demand immediate repayment;
 - (g) other significant features such as security requirements, late payment charges and the charges or termination fees for early repayment, and a brief description of the basis on which the late payment charges and the charges or termination fees for early repayment will be determined and when they will be payable; and
 - (h) the institution's right, in the event of default of the customer, to set off any credit balance in other accounts held by the customer (or in a joint account of the customer) against the amount due to the institution.
- 21.3. In addition to the information set out in section 21.2 above, the following information on instalment loans (i.e. loans repayable by equal instalments) should be provided to customers upon application for a loan or in a subsequent offer, and on request -
- (a) where applicable, the loan balance used as the basis for calculating the fees and charges under sections 21.2(c) and 21.2(g) above and the timing when the loan balance is determined; and
 - (b) the apportionment of interest and principal for each loan repayment throughout the loan tenor and the method of apportionment.
- 21.4. Institutions should, in addition to complying with section 5.2 above, provide a consistent and succinct summary of major terms and conditions to customers in the form of a Key Facts Statement when they apply for loans and overdrafts and on request. A Key Facts Statement should include

information which is of significant concern to customers, such as interest rates, fees and charges, and should follow the standard template provided in the relevant guidelines issued by the industry Associations.

- 21.5. For loans with a specified maturity date, institutions should quote the APRs for different tenors which are commonly selected by customers.
- 21.6. For loans which are revolving in nature (excluding overdrafts), institutions should quote the APR calculated in accordance with the method set out in the relevant guidelines issued by the industry Associations together with the annual fee. The APR and the annual fee should be shown with equal prominence whenever interest rates are quoted.
- 21.7. Where there is more than one applicable interest rate during the loan period, institutions should quote an APR which takes into account all the applicable interest rates for different parts of the loan period and is calculated in accordance with the method set out in the relevant guidelines issued by the industry Associations.
- 21.8. The number of days used as the basis of interest calculation for loans and deposits should be consistent.
- 21.9. Where the rate of interest for a loan or an overdraft is based on a reference rate, for example, best lending rate, institutions should notify customers of any changes in the reference rate as soon as practicable, unless such changes have been widely publicized in the media.
- 21.10. Institutions should notify customers promptly when accounts without pre-arranged credit facilities are overdrawn and the related fees and charges.
- 21.11. If institutions intend to charge a default rate of interest and make other charges in accordance with the relevant terms and conditions when customers overdraw their accounts or exceed an agreed borrowing limit, institutions should advise customers in advance of their right to impose such default interest and charges and inform customers promptly after exercising such right.
- 21.12. Institutions should advise customers to inform them as soon as possible of any difficulty in repaying or servicing the loan over the credit period.

22. Residential Mortgage Lending

- 22.1. This section applies to any mortgage loan secured on a residential property / car park regardless of the purpose of the loan or the location of the residential property/car park. In the case of an individual providing (or proposing to provide) a residential property / car park as third party security, section 24 below will apply.
- 22.2. Institutions should provide customers and prospective customers with information similar to that in section 21.2 above upon application for a mortgage loan secured on a residential property / car park or, where relevant, in a subsequent offer and on request. In addition, institutions should warn customers that the mortgage loan is secured on the property in question and that default may result in the institution taking possession of, and selling, the property.
- 22.3. In the case of an "All Monies" mortgage (i.e. a mortgage which will secure all amounts payable by the borrowers) executed on or after 4 July 2005 involving more than one borrower, the amount secured under the mortgage should not exceed the amount of money, obligations and liabilities owing or incurred at any time by the co-borrowers jointly. This does not restrict a co-borrower acting as surety from separately guaranteeing or securing the other's obligations in a transparent manner which complies with the provisions of section 24 below.
- 22.4. Institutions should provide customers with revised particulars of instalments payable by the customer after every adjustment of the interest rate.

- 22.5. Institutions should inform customers and prospective customers that they have to pay for the legal expense of both the solicitors who represent themselves and the solicitors who represent the institutions to prepare mortgages on properties.
- 22.6. Institutions should also inform customers or prospective customers that they have the right to employ separate solicitors for themselves, and the cost implications of doing so.
- 22.7. Customers may, from institutions' approved lists, appoint solicitors to represent both themselves and the institutions (unless it is the institution's policy to require separate legal representation) and employ insurers which they think fit to insure the properties against fire or other serious damage. The coverage of such approved lists should be sufficiently wide to allow customers to make a choice. In the case of insurers, the approved list should include insurers which are not related to the institution.
- 22.8. Institutions should inform customers and prospective customers that they may employ solicitors not on the approved lists of institutions (a) to represent themselves, and, (b) if the institutions' policy so allows to represent both themselves and the institutions, and if they do so, the procedures involved, the nature and amount of the fees and charges levied by the institutions, and the nature of any extra fees that may be charged by the solicitors which are known to the institutions including the costs for the additional work for each solicitor in reviewing the other solicitor's documentation under scenario (a).
- 22.9. If it is the institutions' policy to require separate legal representation or to employ only solicitors on the approved lists to represent the institutions, this should be highlighted to customers and prospective customers. Institutions should also inform customers and prospective customers of the cost implications as a result.
- 22.10. Institutions should inform customers and prospective customers that they may employ insurers not on the approved lists of institutions, and if they do so, the procedures involved, any criteria to be fulfilled by the insurers (e.g. any minimum policy cover), any fees charged by the institutions, and any extra costs involved. Any criteria imposed should be reasonable.
- 22.11. Institutions should inform customers or prospective customers upon mortgage applications and renewals of the fire insurance policy on the property that they may choose to take out a fire insurance policy (from an insurer on the approved lists of the institutions or not), or to adopt the master fire insurance policy of the property (where this exists and is acceptable to the institutions). Institutions should not charge any fee if a customer chooses the master fire insurance policy option. Institutions may however require customers to take out fire insurance in addition to such master fire insurance policy under reasonable circumstances, and in doing so, institutions should provide the reason to the customers.
- 22.12. The amount and the nature of risks to be insured during the term of the loan should be reasonable and should be a matter of mutual agreement between institutions and their customers. Institutions should provide an option for the customers or prospective customers to choose whether the insured amount should be based on the original loan value, the current loan value (provided it is not below the cost of reinstating the property) or the cost of reinstating the property, and should inform them of any extra costs or fees involved (for example, annual valuation fees) for the latter two options.
- 22.13. On receipt of a request from customers for discharge of a mortgage, institutions should as soon as reasonably practicable release title deeds and any relevant documents (other than the mortgage itself) to the solicitor representing the customer against the solicitor's undertaking to return the documents on demand as appropriate. Unless institutions encounter any practical difficulties, this process should normally be completed within 21 days. If institutions are unable to meet this industry standard, they should promptly inform the customer.
- 22.14. Institutions should guard against fraud by persons misrepresenting themselves as the owner(s) of the property by following the relevant guidelines issued by the industry Associations.

23. Other Secured Lending

In the case of a security document other than a residential mortgage involving more than one borrower executed on or after 3 January 2006, the amount secured under the security document should not exceed the amount of money, obligations and liabilities owing or incurred at any time by the co-borrowers jointly. This does not restrict a co-borrower acting as surety from separately guaranteeing or securing the other's obligations in a transparent manner which complies with the provisions of section 24 below.

24. Guarantees and Third Party Securities

- 24.1. Subject to the consent of the borrower as required in section 24.9 below, institutions should provide an individual proposing to give a guarantee or third party security (the surety) with a copy or summary of the contract evidencing the obligations to be guaranteed or secured.
- 24.2. Institutions should in writing (in printed form) advise the surety -
- (a) that by giving the guarantee or third party security, the surety might become liable instead of or as well as the borrower;
 - (b) whether the guarantee or third party security is unlimited as to amount (that is to say that the institution may agree to extend further facilities to the borrower without the consent of the surety) and, if so, the implications of such liability (for example, that the surety will be liable for all the actual and contingent liabilities of the borrower, whether now or in future including for further facilities extended to the borrower) and if this is not the case, what the limit of the liability will be;
 - (c) whether the liabilities under the guarantee or the third party security are payable on demand;
 - (d) under what circumstances the surety would be called upon to honour his or her obligations;
 - (e) under what circumstances, and the timing within which, it would be possible for the surety to extinguish his or her liability to an institution; and
 - (f) that the surety should seek independent legal advice before entering into the guarantee or providing third party security.
- 24.3. A clear and prominent notice regarding the provisions in section 24.2 above should be included in or attached to the guarantees and other third party security documentation.
- 24.4. Institutions should provide a surety with an option to choose whether the guarantee or third party security should be limited or unlimited in amount (as described in section 24.2(b) above).
- 24.5. For the purpose of section 24.4 above, a limited guarantee or third party security may include one which is either -
- (a) limited in amount in respect of principal; or
 - (b) unlimited in amount but is limited to secure one or more specific facilities
- and may, with the consent of the surety (and only with the consent of the surety), secure additional amounts, further facilities or changed facilities (in the case of (a)) or further or changed facilities (in the case of (b)) beyond those originally secured.
- 24.6. Where a guarantee or third party security is unlimited in amount (as described in section 24.2(b) above), institutions should give notice to the surety as soon as reasonably practicable when further facilities are extended to the borrower or when the nature of the facilities extended to the borrower is changed.

- 24.7. Institutions should provide the surety with a copy of any formal demand for overdue payment that is sent to the borrower who has failed to settle the overdue amount following a customary reminder.
- 24.8. Subject to the consent of the borrower as required in section 24.9 below, institutions should provide, upon request by the surety, a copy of the latest statement of account provided to the borrower, if any.
- 24.9. Before accepting a guarantee or a third party security, institutions should obtain the prescribed consent of the borrower to provide the surety with the documents mentioned in sections 24.1, 24.7 and 24.8 above. If the borrower does not give consent, the institution should inform the surety of this in advance so that he or she can decide whether to provide the guarantee or the security.

Chapter 3 - Card Services

25. Application

This chapter applies to the provision of card services either directly by institutions or through their subsidiaries or affiliated companies controlled by them. Except where otherwise specified, this chapter applies to all cards issued by card issuers (see definition of “Cards” in the definition section).

26. Issue of Cards

26.1. Card issuers should act responsibly in the issue and marketing of credit cards and the setting of credit card limits, in particular to persons (such as full time students) who may not have independent financial means. Card issuers should in all cases -

- (a) not open a credit card account for customers, or increase any credit limit applicable to such accounts, unless the card issuers consider the ability of the customers’ repayment capacity or financial strength. Card issuers should establish and maintain reasonable written policies and procedures for assessing customers’ repayment capacity or financial strength;
- (b) not open credit card accounts for customers who are less than 18 years old, unless the customers have submitted a written application and the card issuers have -
 - (i) financial information indicating that the customers have an independent ability to repay the proposed extension of credit in connection with the accounts, or
 - (ii) an agreement signed by a cosigner, guarantor, or joint applicant who is at least 18 years old to be jointly liable with the customers for any debt on the accounts, and financial information indicating that such cosigner, guarantor, or joint applicant has the ability to repay such debts. If a credit card account has been opened pursuant to this section, the card issuers should not increase the credit limit on such account before the customer attains the age of 18 unless the said cosigner, guarantor, or joint account holder who assumed liability at account opening agrees in writing to assume liability on the increase;
- (c) not grant credit limit exceeding HK\$10,000 to students in an institution of higher education, unless the student has submitted a written application and has given financial information indicating that the student has an independent ability to repay the proposed extension of credit in connection with the account. This requirement is only applicable to credit cards issued on or after 1 October 2011.
- (d) not offer credit card limit increases in respect of accounts that are in default for more than 60 days or are subject to a debt relief plan.
- (e) send a communication about offering of an increase in a credit limit to cardholders at least 30 days before the change. They should explain in clear and simple language how cardholders’ limit is changing and what cardholders can do if they wish to reject the new limit. The communication should reassure cardholders that card issuers will not treat them any differently simply because they have exercised their right to reject a limit increase.

- 26.2. Card issuers should issue cards to customers only when -
- (a) in the case of new cards they have been requested by the customers to do so;
 - (b) they are issued to replace existing cards upon cardholders' request because the existing cards have been damaged, lost or stolen, or due to suspected security incidents; or
 - (c) they are to replace or renew cards that have already been issued under the following conditions (but subject to section 26.9 below) -
 - (i) the credit limit and any other relevant limits and the principal terms and conditions (including annual fees) should remain the same;
 - (ii) no additional new card is issued i.e. the cardholders still get the same number of cards;
 - (iii) the service(s) and privilege(s) with the card remain unchanged or are improved; and
 - (iv) no additional cost, potential liability or potential risk of financial loss to cardholders is involved.
- 26.3. Where card issuers intend to replace or renew cards that have already been issued, but the conditions set out in section 26.2(c)(i) to (iv) are not fulfilled, card issuers should obtain consent from cardholders and highlight the key differences between the existing card and the replacement or renewal card before issuing the card. For the avoidance of doubt -
- (a) where an existing card may be retained by the cardholder, the card issuer should highlight this option to the cardholder, and the replacement or renewal card should be considered as an additional new card and thus the cardholder's consent is required; and
 - (b) a card issuer may issue a card to replace a co-branded card or a card the class of which has been terminated, provided that there is an outstanding balance or there are (or appear to be) recurring payment arrangements which can be carried over to the new card on the card account and the card issuer has made reasonable efforts but is unable to contact the cardholder.
- 26.4. Card issuers should satisfy themselves about the identity of a person applying for a card and provide the applicant with details of the identification needed.
- 26.5. In addition to the detailed terms and conditions, card issuers should make readily available to cardholders general descriptive information on the use of cards. Such information should include -
- (a) security of the cards/personal identification numbers (PINs) (see section 32 below);
 - (b) the procedures for stopping the use of a card or reporting the loss or theft of the card (including a telephone number to which such a report may be made) (see section 35 below);
 - (c) the cardholder's liability for the unauthorized use of a card (see section 36 below);
 - (d) any credit facilities to which the cardholder may gain access;
 - (e) whether the card has more than one function, the types of transaction that may be made and the accounts to which access may be gained using the card;
 - (f) any restrictions on the use of the card (including withdrawal and transaction limits);
 - (g) the procedures for making complaints against outlets arising from the use of the card;
 - (h) how to use the card issuer's error/dispute resolution processes (including the procedure for querying entries on a periodic statement);

- (i) the procedures for cancelling recurring payments;
 - (j) the method of applying exchange rates and/or levies to transactions in foreign currencies or cross-border transactions;
 - (k) all fees and charges which will apply, including the annual fee, any charges relating to cash advances (including any handling charge and any additional cash advance fee), any late payment charge, etc. and the basis of determining the relevant fees and charges unless these are outside the control of the card issuer;
 - (l) the basis on which interest or finance charges will be determined and when they will be payable, including where relevant the APR (see section 12 above), the length of the interest free period, the timing when interest or finance charges will start to accrue on the outstanding balance arising from the use of credit cards, and the period over which such interest or finance charges will be levied; and
 - (m) any rights of set-off claimed by the card issuer (see section 31 below).
- 26.6. When accepting a principal cardholder's instructions to issue a subsidiary credit card, card issuers should -
- (a) give clear and prominent notice to the primary and subsidiary cardholders of their respective liabilities for debts incurred on the credit cards issued;
 - (b) inform both the primary and subsidiary cardholders of the means by which a subsidiary credit card may be cancelled and suspended, including the need to return the subsidiary credit card as soon as possible. Where the subsidiary credit card is not returned and if requested to do so by the primary cardholder, the card issuer should take prompt action to prevent further use of the subsidiary credit card, in line with the procedures which apply to lost cards. The card issuer should warn the primary cardholder that he/she may be liable for any payments arising from the use of the subsidiary credit card until it has been returned or until the card issuer is able to implement the procedures which apply to lost cards. Any related charges arising from such procedures should be made known to the primary cardholder.
- 26.7. While card issuers can hold primary cardholders liable for the debts of subsidiary cardholders, they should not hold subsidiary cardholders liable for the debts of the primary cardholders or other subsidiary cardholders.
- 26.8. Card issuers should inform cardholders if a card issued by them has more than one function or transaction limit. Card issuers should not add a new function or transaction limit to a card without the prescribed consent of the cardholders. Card issuers should comply with requests from cardholders not to issue PINs where cardholders do not wish to use functions operated by a PIN.
- 26.9. Except in the circumstances where a card is issued to replace an existing card upon a cardholder's request because the existing card has been damaged, lost or stolen, or due to a suspected security incident, card issuers should not replace or renew a card without allowing the cardholder at least 30 days from the date of replacement or renewal to cancel the card without having to pay any fee.
- 26.10. In cases where an Octopus automatic add value service or any autopay instructions linked with the existing credit card will not be rolled over to a replacement or renewal credit card (e.g. where a replacement or renewal credit card bears a number different from the existing credit card), this should be highlighted to the cardholder and the card issuer should remind the cardholder to make appropriate arrangements for any pre-arranged payments through the existing credit card. To enhance cardholder service, upon a cardholder's request for assistance, a card issuer should endeavour to assist the cardholder and provide a list of the regular payments and autopay instructions going through the existing credit card account on a best effort basis to help the cardholder in making appropriate arrangements to avoid the risk of missed payments and rejected transactions, and remind the cardholder to review the list.

- 26.11. For the convenience of cardholders, there is a period during which the newly issued and the existing card are both valid. Card issuers should advise cardholders as to when the old card will become invalid and how it should be properly disposed of.
- 26.12. Card issuers should not levy any annual fees on credit cards (including any principal or subsidiary card) which are not activated by cardholders. In the case of renewal or replacement cards which are not activated, if the accounts have no outstanding balances and no cardholder-initiated activities during the first 18 months from the date of issuance of the cards, card issuers should not levy any annual fees on the credit card accounts.
- 26.13. Where credit cards (including any principal or subsidiary card) are not activated by cardholders and the accounts have no outstanding balances and no cardholder-initiated activities for 18 months from the date of issuance of the cards, the card issuers should notify the cardholders of the following:
- (a) to activate the cards within 30 days of the notification to avoid them being terminated, and the risk of missing any pre-arranged payments; and
 - (b) whether annual fees would be charged after the credit cards are activated, pursuant to the account terms and conditions.

If the credit cards (including any subsidiary card) remain unactivated 30 days after the notification, the card issuers should take steps to terminate such credit card accounts as soon as reasonably practicable.

- 26.14. In the case where there are activated subsidiary cards, and the principal credit cards are not activated by cardholders and the principal and all subsidiary cards have no outstanding balances and no cardholder-initiated activities for 18 months from the date of issuance of the cards, the card issuers should remind the principal cardholders of the following:
- (a) to activate the principal cards within 30 days of the notification to avoid them being terminated and the risk of missing any pre-arranged payments, or cancel the cards;
 - (b) the list of subsidiary cards and whether they are activated or not, and that the subsidiary cards will also be cancelled if the principal cardholders cancel their cards; and
 - (c) the principal cardholders should make appropriate arrangement for the subsidiary cardholders, if the subsidiary cards are cancelled.

If the principal cards remain unactivated 30 days after the notification despite the reminder, the card issuers should take steps to terminate the principal and subsidiary credit card accounts as soon as reasonably practicable.

- 26.15. When card issuers provide over-the-limit facilities to cardholders, card issuers should -
- (a) provide a convenient channel for cardholders to opt out of over-the-limit facilities on credit card application forms and monthly statements. The opt-out channel should be made available in a prominent and conspicuous manner to draw cardholders' attention to their opt-out right. In particular, card issuers should provide the opt-out channel on the front of any page of each monthly statement that reflects the imposition of an over-the-limit fee or charge. For the avoidance of doubt, cardholders can exercise their opt-out right any time, and if cardholders exercise their opt-out right, the card issuer should effect the cardholders' request as soon as practicable;
 - (b) when providing the opt-out channels, explain to cardholders what it means if they do not exercise their opt-out right, and disclose the amount of any fees or charges that will be imposed for over-the-limit transactions and any increase in interest rate that may apply if the cardholders exceed the credit limit;
 - (c) ensure that the limit of the facility is reasonable and generally does not represent a significant

percentage of the credit limit of their credit cards, since the purpose of such over-the-limit facility is to provide convenience to cardholders to cater for the situation where cardholders may occasionally incur an excess over their credit limit. Where a cardholder constantly exceeds his/her credit limit, card issuers should consider reviewing a cardholder's existing credit limit, and as appropriate, suggest the cardholder applying for a higher credit limit;

- (d) where an over-the-limit transaction takes place, inform the cardholder promptly through SMS, email or other channel offered by card issuers which can reach the cardholder expeditiously, in addition to notification through the cardholder's regular statement. For a cardholder who has already exceeded his/her limit, this notification is not necessary for subsequent over-the-limit transactions. For the avoidance of doubt, such notification should be provided if a cardholder repays a limit excess but (i) exceeds the limit again in the same statement cycle, or (ii) exceeds the limit again in the subsequent statement cycle(s);
- (e) not impose more than one over-the-limit fee or charge per billing cycle on the cardholders who have not opted out of the over-the-limit facilities; and
- (f) not impose an over-the-limit fee or charge for a billing cycle if a cardholder exceeds a credit limit solely because of fees or interest charged by the card issuers to the cardholder's account.

27. Terms and Conditions

- 27.1. Card issuers should provide customers with clear disclosures of the terms and conditions on or before they open an account. Card issuers should also provide a full set of terms and conditions at the request of customers (or prospective customers).
- 27.2. Card issuers should draw the attention of customers to those major terms and conditions which impose significant liabilities or obligations on their part. Such terms and conditions should be printed in the application forms for card services in accordance with section 27.5 and 27.6.
- 27.3. Card issuers should, in addition to complying with section 5.2 above, provide a consistent and succinct summary of major terms and conditions to customers in the form of a Key Facts Statement when they apply for credit cards and on request. A Key Facts Statement should include information which is of significant concern to customers, such as interest rates, fees and charges. Card issuers should follow the standard template provided in the relevant guidelines issued by the industry Associations.
- 27.4. Card issuers should provide a full set of terms and conditions to customers in writing on or before delivery of the cards to customers. A Key Facts Statement is not intended to replace a full set of terms and conditions.
- 27.5. Card issuers should disclose terms and conditions in plain language (both in English and Chinese). Complex legal and technical terms should be avoided wherever practicable. Terms and conditions should be presented in a reasonable layout and font size that is readily readable. Card issuers should meet the "clear and conspicuous" standard, which requires disclosure to be in a reasonably understandable form and readily legible standard.
- 27.6. The APRs for retail purchase and cash advances and fees and charges should be disclosed prominently and conspicuously in the terms and conditions, and in a font size that is sufficiently larger than that for the other terms and conditions.
- 27.7. Card issuers should post their card agreements and terms and conditions online at the card issuers' own websites.
- 27.8. Card issuers should provide cardholders with at least 60-day advance notice before any significant change in the terms and conditions takes effect.

28. Fees and Charges

- 28.1. Card issuers should allow credit card cardholders to make a payment by any methods, such as mail, electronic, or telephone payments, without incurring any fee, unless such payment is made through a bank counter or a cardholder service representative of the card issuers.
- 28.2. Card issuers should not impose an account inactivity fee on a cardholder.
- 28.3. Card issuers should not impose a closed account fee on a cardholder, provided that a card issuer may recover the cost of a welcome gift or other benefit already received by the cardholder if the conditions for receiving the gift or benefit as stated in the terms agreed with the cardholder have not been fulfilled by the cardholder.
- 28.4. If card issuers impose a fee for violating the terms or other requirements of an account, the fee should be set at a reasonable amount. Late payment fee should be an amount determined in accordance with the above principle or the amount of minimum payment, whichever is the lower. In addition, when charging fees on minor breaches involving small amounts, under normal circumstances card issuers should exercise flexibility in waiving or reducing the fees. Card issuers should also be prepared to respond to enquiries from cardholders regarding the type of violation and the basis for charging the respective fee.
- 28.5. Card issuers should not impose more than one fee in case a late payment is triggered by a returned payment. They can either impose a late payment fee or a returned payment fee.

29. Interest Rate

- 29.1. Card issuers should quote APRs on credit card products (one for retail purchase and one for cash advances), together with the annual card fee, to facilitate comparison between different charging structures. The APRs should be calculated in accordance with the method set out in the relevant guidelines issued by the industry Associations. The APRs and the annual fee should be shown with equal prominence whenever interest rates of credit card products are quoted except on statements of account where the annual fee is not required to be shown.
- 29.2. Card issuers should not increase the APR, or impose additional charges, on a credit card if the cardholder has agreed with or is in discussion with the card issuers for a debt relief plan for the account.
- 29.3. Card issuers should notify the cardholders at least 60 days before any APR increase (other than due to delinquency or default) or a significant change in account terms, and offer the following two options to settle the outstanding balance:
 - (a) where cardholders opt to close the credit card accounts, card issuers should offer the following two options to the cardholders to settle the outstanding balance: (i) give the cardholders a reasonable period to repay the balances at the existing APR, with a repayment method not less beneficial to the cardholders than the repayment method before the effective date of the change, and (ii) give the cardholders the option to transfer the outstanding balance to an instalment loan at an APR not higher than the existing credit card APR; and
 - (b) where cardholders opt to keep the credit card accounts, card issuers should give the cardholders the option to transfer the outstanding balance to an instalment loan at an APR not higher than the existing credit card APR.

For the avoidance of doubt, increase of APR from a promotional rate back to a pre-existing rate upon expiry of the promotional period in accordance with pre-agreed terms is not considered an APR increase for the purpose of this section.

29.4. On an APR increase due to delinquency or default, card issuers should give an advance notice to cardholders, after the event triggering the rate increase, during which the cardholders can reject the change by closing the credit card accounts. Where cardholders opt to close the credit card accounts before the rate increase takes effect, card issuers should give cardholders a reasonable period to repay the balance at the existing APR. The advance notice can be provided in the form of -

- (a) a customized warning message in a demand letter,
- (b) a customized warning message read to the cardholder over the phone (with tape recording of the cardholder's acknowledgement), or
- (c) a customized warning message in a regular monthly statement.

In the cases of (a) and (b) above, card issuers should not increase the interest rate until at least 30 days after the date of the demand letter or telephone call. In the case of (c) above, card issuers should not increase the interest rate until the start of a new billing cycle after the issuance of the monthly statement containing the customized warning message.

29.5. For any increase in APR, card issuers should review the account no less frequently than once every 6 months, to determine whether to reduce the APR. When a reduction is indicated by the review, the card issuers must reduce the APR previously increased not later than 60 days after completion of the review. The card issuers' obligation to review ceases to apply if they reduce the APR to a rate equal to or lower than the rate applicable immediately prior to the increase. For the avoidance of doubt, increase of APR from a promotional rate back to a pre-existing rate upon expiry of the promotional period in accordance with pre-agreed terms is not considered an APR increase for the purpose of this section.

29.6. If card issuers increase an APR that applies to a credit card account, they should give at least one principal reason, in general terms, in the notification letter for the rate increase to the affected cardholders, such as changes in market conditions, delinquency or default.

29.7. Card issuers should not adopt double-cycle billing, i.e. they should not impose finance charges as a result of the cardholders not repaying the full balance by the due date thus losing a grace period which is defined as a period within which any credit extended may be repaid without incurring a finance charge (see Annex II for an illustrative schematic diagram) -

- (a) on balances for day(s) in billing cycle(s) that precede(s) the most recent billing cycle; or
- (b) on any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

30. Repayment

- 30.1. Card issuers should set the minimum periodic payment for a credit card account at an amount no less than all interest and fees and charges (including annual card fees), plus at least 1% of outstanding principal.
- 30.2. When cardholders make a payment in excess of the required minimum periodic payment, card issuers should allocate the excess amount in an order that minimizes interest charges to the cardholders. For instance, card issuers should allocate the excess amount first to the monthly instalment balance, then to the balance with the highest APR and any remaining portion to the other balances in descending order based on the applicable APR.
- 30.3. Card issuers should allow cardholders to set up an automated payment instruction to pay the card issuers any percentage of the statement balance between minimum payment and full payment on a regular basis. Card issuers should also allow cardholders to alter the automated payment instruction by simple means.
- 30.4. If the payment due date in a given month falls on a day on which card issuers do not receive or accept payments, card issuers should treat a payment received the next business day as timely.

31. Rights of Set-off

- 31.1. The descriptive information made available to cardholders (see section 26 above) should include clear and prominent notice of any rights of set-off claimed by the card issuer over credit and debit balances in different accounts (including credit card and deposit accounts) of the cardholder.
- 31.2. Where subsidiary cards are issued, it should be made clear to the principal cardholder whether the card issuer claims the right to set off the debit balance in the credit card account of any of the principal or subsidiary cardholders against the credit balance in other accounts of the principal cardholder. It should also be made clear to all subsidiary cardholders whether the card issuer claims the right to set off the debit balance in the credit card account of a subsidiary cardholder against the credit balance in other accounts of that particular subsidiary cardholder. In accordance with section 26.7 above, card issuers should not set off the debit balance in the credit card accounts of the principal cardholder or other subsidiary cardholders against the credit balance of a subsidiary cardholder.
- 31.3. Card issuers should inform cardholders promptly after exercising any rights of set-off.

32. Security of Cards/PINs

- 32.1. Card issuers should issue cards and PINs separately and take reasonable steps to satisfy themselves that these have been received by cardholders, whether they are personally collected by cardholders or delivered by mail. Where cards and PINs are personally collected, card issuers should satisfy themselves as to the identity of the recipient.
- 32.2. Card issuers should advise cardholders of the need to take reasonable steps to keep the card safe and the PIN secret to prevent fraud. In particular, they should advise cardholders-
 - (a) that they should destroy the original printed copy of the PIN;
 - (b) that they should not allow anyone else to use their card and PIN;
 - (c) never to write down the PIN on the card or on anything usually kept with or near it; and
 - (d) not to write down or record the PIN without disguising it.

- 32.3. When cardholders are provided with an opportunity to select their own PINs, card issuers should advise cardholders that it is not suitable to use easily accessible personal information such as telephone numbers or date of birth. Card issuers should advise cardholders not to use the PINs for accessing other services (for example, connection to the internet or accessing other websites).
- 32.4. Where a card is linked with deposit accounts, card issuers should set limits for cash and debit transactions of the deposit accounts on a per card basis irrespective of the number of deposit accounts with which the card is linked.
- 32.5. Card issuers should ensure that transactions made through electronic terminals can be traced and checked, so that any error can be identified and corrected.
- 32.6. Cardholders should be advised to refer to the security advice provided by card issuers from time to time. Moreover, card issuers should regularly review their security advice to ensure that it remains adequate and appropriate as the technology environment changes.

33. Transaction Records

At Electronic Terminals

- 33.1. Subject to security requirements, at the time of transactions made through electronic terminals, a printed transaction record containing the following information should be provided -
 - (a) the amount of the transaction;
 - (b) the account(s) being debited or credited;
 - (c) the date and the time of the transaction;
 - (d) the type of transaction, for example, deposit, withdrawal or transfer;
 - (e) the name of the merchant to whom the payment was made, in the case of a debit or credit card transaction; and
 - (f) a number or code that enables the terminal where the transaction was made to be identified.

Such printed records will not be necessary if the cardholder chooses not to require such records for contactless transactions.

- 33.2. For cash withdrawals through automated teller machines (ATMs), such printed transaction record will not be necessary if the cardholder chooses not to require such record.

Periodic Statements

- 33.3. Card issuers should provide cardholders with statements of account by mail or electronically at monthly intervals, unless -
 - (a) a passbook or other record of transactions is provided;
 - (b) there has been no transaction and no outstanding balance on the account since the last statement; or
 - (c) otherwise agreed with the cardholder.

Where card issuers do not post or email statements of account to cardholders but require them to access the information electronically, card issuers should advise cardholders concerned when the statements are available for such access.

- 33.4. Card issuers should provide cardholders with clear statements of the activity on their card accounts. Card issuers should meet the “clear and conspicuous” standard, which requires disclosure to be in a reasonably understandable form and readily legible standard. The statement should show -
- (a) for each transaction occurring since the previous statement -
 - (i) the amount of the transaction;
 - (ii) the date the transaction was credited/debited to the account;
 - (iii) the type of transaction;
 - (iv) the transaction record number or other means by which the account entry can be reconciled with a transaction record; and
 - (v) the name of the merchant to whom payment was made, in the case of a debit or credit card;
 - (b) clear information on the cost to the cardholders of using their credit cards, in particular, details of the following by transaction types (examples of transaction types include cash advances and purchases) -
 - (i) fees and charges;
 - (ii) interest charged;
 - (iii) APRs; and
 - (iv) balance subject to interest rate (optional); and
 - (c) the address or telephone number to be used for enquiries or reporting errors in the statement.
- 33.5. Card issuers should provide customised information to credit card cardholders about the period of time (number of months) and total cost (including interest and principal payments) involved in paying a balance in full by making only minimum payments, and the monthly payment amount required and total cost (including interest and principal payments) to pay off the outstanding balance in 36 months. Such information should be provided -
- (a) on the statements of account in the form of Annex III, or
 - (b) by means of a calculator on the card issuers’ websites or other convenient means (subject to a notification in the monthly statements to inform the cardholders about the calculator or such other means in the form of the final paragraph of Annex III).
- 33.6. Card issuers should mail or deliver periodic statements to credit card cardholders at least 21 days prior to the payment due date.

34. Unauthorized Transactions

- 34.1. Card issuers should advise cardholders to examine their statements of credit card accounts and report any unauthorized transactions in the statement to the card issuers within 60 days from the statement date. Cardholders should be warned that the card issuer would reserve the right to regard the statement as conclusive should they fail to report any unauthorized transactions within the specified period. Card issuers should not, however, avail themselves of this right in relation to -
- (a) unauthorized transactions arising from forgery or fraud by any third party including any employee, agent or servant of the cardholder and in relation to which the card issuer has failed to exercise reasonable care and skill;
 - (b) unauthorized transactions arising from forgery or fraud by any employee, agent or servant of the card issuer; or
 - (c) other unauthorized transactions arising from the default or negligence on the part of the card issuer or any of its employees, agents or servants.
- 34.2. Card issuers should, except in circumstances which are beyond their control, complete the investigation within 90 days upon receipt of notice of an unauthorized transaction.
- 34.3. Where the cardholder reports an unauthorized transaction before the payment due date, the cardholder should have the right to withhold payment of the disputed amount during the investigation period. Card issuers should not impose any interest or finance charges on such disputed amount while it is under investigation or make any adverse credit report against the cardholder. If, however, the report made by the cardholder is subsequently proved to be unfounded, card issuers may reserve the right to re-impose the interest or finance charges on the disputed amount over the whole period, including the investigation period. Card issuers should inform cardholders of any such right reserved.
- 34.4. Card issuers should promptly make relevant corrections and deliver a correction notice if an unauthorized transaction has taken place; if no unauthorized transaction has occurred, card issuers should explain this to the cardholder and furnish copies of documentary evidence.

35. Lost Cards/PINs

- 35.1. Card issuers should advise cardholders that they must inform the card issuer as soon as reasonably practicable after they find that their cards/PINs have been lost or stolen or when someone else knows their PIN.
- 35.2. Card issuers should provide an effective and convenient means by which cardholders can notify a lost or stolen card or unauthorized use of a card; facilities such as telephone hot-lines should be available at all times, which will provide for logging and acknowledgement of the notifications from cardholders. Cardholders should be reminded of such means, for example, by including details of the notification facilities in the periodic statements sent to cardholders.
- 35.3. When such facilities are not made available by card issuers during particular periods, card issuers should be liable for any losses due to non-notification, provided the cardholder notifies the card issuer within a reasonable time after the facilities have become available again.
- 35.4. Card issuers should act on telephone notification provided that the cardholder can be identified satisfactorily. Card issuers may also ask cardholders to confirm in writing any details given by telephone.
- 35.5. Card issuers on being advised of a loss, theft or possible misuse of a card/PIN should take action to prevent further use of the card/PIN. Where a principal credit card has been reported lost, the card issuer should explain to the cardholder whether the subsidiary credit card is still valid in such circumstances.

36. Liability for Loss

36.1. Card issuers will bear the full loss incurred -

- (a) in the event of misuse when the card has not been received by the cardholder;
- (b) for all transactions not authorized by the cardholder after the card issuer has been given adequate notification that the card/PIN has been lost or stolen or when someone else knows the PIN (subject to section 36.4 below);
- (c) when faults have occurred in the terminals, or other systems used, which cause cardholders to suffer direct loss unless the fault was obvious or advised by a message or notice on display; and
- (d) when transactions are made through the use of counterfeit cards.

36.2. The card issuers' liability should be limited to those amounts wrongly charged to cardholders' accounts and any interest on those amounts.

36.3. Card issuers should give clear and prominent notice to cardholders that they may have to bear a loss when a card has been used for an unauthorized transaction before the cardholder has told the card issuer that the card/PIN has been lost or stolen or that someone else knows the PIN. Provided that the cardholder has not acted fraudulently, with gross negligence or has not otherwise failed to inform the card issuer as soon as reasonably practicable after having found that his or her card has been lost or stolen, the cardholder's maximum liability for such card loss should be confined to a limit specified by the card issuer, which should not exceed HK\$500. The application of this limit is confined to loss specifically related to the card account and does not cover cash advances. Card issuers should give clear and prominent notice of this limit to cardholders.

36.4. Cardholders should be warned that they will be liable for all losses if they have acted fraudulently. Cardholders may be held liable for all losses if they have acted with gross negligence or have failed to inform the card issuer as soon as reasonably practicable after having found that their cards have been lost or stolen. Cardholders should be warned that this may apply if they fail to follow the safeguards or meet their obligations set out in sections 32.2 and 35.1 above if such failure has caused the losses.

36.5. A card issuer which is a party to a shared electronic system should not avoid liability to a cardholder in respect of any loss arising from the use of the card either caused or contributed by another party to the system.

37. Treatment of Credit Balances

Card issuers should refund any credit balance outstanding on a credit card account to the cardholder within 7 working days from the date of receipt of the cardholder's request in accordance with the cardholder's instructions. Card issuers should not forfeit any unclaimed credit balance at any time. Such amount should be refunded to any person who can prove a good claim on the credit balance at any future time.

38. Direct Mailing

When card issuers enter into direct mailing agreements with suppliers in the marketing of goods or services to credit cardholders, the agreements should specify the conditions for refunds to cardholders (for example, when the goods are returned by the cardholder to the supplier within a specified period) and the period within which such refunds should be effected.

Chapter 4 - Payment Services

39. Cheques

- 39.1. In addition to the detailed terms and conditions, institutions should make readily available to customers general descriptive information about the use of cheques at the time a current account is opened, including -
- (a) the distinction between “bearer” and “order” cheques;
 - (b) the additional protection that is afforded to customers through the use of crossed cheques;
 - (c) how a cheque may be made out so as to reduce the risk of unauthorized alteration;
 - (d) the procedures for stopping payment on a cheque (including in the event of loss of the cheque), and any fees or charges which may apply to this service;
 - (e) how an institution will treat a cheque which is incorrectly completed, altered without authorization, post-dated or out of date, including whether the cheque will be returned and the related fees and charges which may apply;
 - (f) how an institution will treat a cheque drawn on an account which has insufficient funds, including that the institution reserves the right to dishonour the cheque, the effects of dishonour and the related fees and charges which may apply; and
 - (g) the usual time taken to clear a cheque and any restrictions which apply to use or withdrawal of the relevant funds pending clearance.
- 39.2. Institutions should also warn customers to exercise caution in the safekeeping of cheque books. Institutions should advise customers that they should report the loss of any signed cheques, blank cheques or cheque books as soon as possible, so that the cheque may be stopped before it has been presented for payment. In particular, institutions should advise customers that cheques should not be pre-signed in blank.

40. Cross-border Payments

- 40.1. Institutions should provide customers wishing to effect outgoing cross-border payments with details of the services they offer. In doing so, they should provide the following types of information -
- (a) a basic description of the appropriate services available and the manner in which these can be used;
 - (b) information as to when money sent abroad on the customer’s instructions will usually reach its destination;
 - (c) the basis on which exchange rates will be applied to the amount remitted;
 - (d) details of any commission or charges payable by customers to the institution; and
 - (e) if available, details of any overseas commission or charges which will apply, for example, those levied by the institution’s overseas agencies or correspondent banks, and whether there is an option for such charges to be paid by the remitting or the recipient party.
- 40.2. Institutions should promptly notify the customer if an outgoing cross-border payment could not be effected.

- 40.3. Institutions should inform customers of their practice regarding when interest payable on inward remittances will begin to accrue (for example, interest will only accrue after the remitted funds are credited to the customer's account).
- 40.4. For incoming cross-border payments, unless otherwise instructed by the remitting bank, institutions should promptly credit the remitted funds to the beneficiary's account after receipt of the funds is confirmed and any necessary checking is completed. If institutions are unable to do so, they should notify the beneficiary and provide an appropriate explanation, unless there are strong justifications not to do so (for example, where the identity of the beneficiary cannot be confirmed).
- 40.5. In addition to section 40.4 above, institutions should notify the customers or, where applicable, beneficiaries within a reasonable time upon receipt of the payment. In doing so, they should provide the following types of information -
 - (a) information on the remittance, including the remitted amount and, where possible, the name of the remitter;
 - (b) the basis on which exchange rates have been or will be applied to the remitted amount; and
 - (c) details of any commission or charges payable by the customers to the institution, for example, the commission payable if the proceeds are to be paid in cash of the same foreign currency as the remittance received.
- 40.6. Upon completion of the outgoing or incoming cross-border payment, institutions should provide customers with a transaction record containing information such as the exchange rate applied and any commission or charges levied.
- 40.7. Institutions should advise customers of the procedures and any fees and charges for the purchase or collection of foreign currency cheques drawn on overseas accounts.

41. Other Payment Services

- 41.1. Other payment services include automatic payments, standing instructions, or access by customers to their accounts by means of telephone, ATM or computer. Where such services are provided, institutions should, in addition to any terms and conditions which may apply, make readily available general descriptive information about the following -
 - (a) any fees or charges applicable to the services;
 - (b) whether a customer can specify the maximum amount of each payment and the date on which such payments should cease;
 - (c) whether a customer may alter or stop a transaction under a particular payment service; and
 - (d) the deadline for giving instructions to alter or stop a payment, where appropriate.
- 41.2. Where customers may gain access to their accounts through telephone banking services, institutions should tape-record the oral instructions of customers as part of transaction records. Such records should be kept for a period that is consistent with the institution's practice for the settlement of disputes of the type of transaction in question.
- 41.3. In providing telephone or computer banking services for transfer of funds to the accounts of third parties other than utility companies, institutions should adopt adequate measures to maintain the security of such transactions, for example, if appropriate, by requiring customers to designate in writing a list of accounts to which funds can be transferred from the customer's account through such services. For the avoidance of doubt, this section does not apply to ATM services.

Chapter 5 - Recovery of Loans and Advances

42. Application

This chapter applies to debt collection activities of institutions, whether undertaken directly by institutions or through third party debt collection agencies.

43. Debt Collection Activities

- 43.1. It is essential that debt collectors, no matter whether they are the staff of the institutions who are assigned the duty of debt collection or the staff of third party debt collection agencies appointed by the institutions to collect debts on their behalf, should act within the law, refrain from action prejudicial to the business, integrity, reputation or goodwill of the institutions for whom they are acting and observe a strict duty of confidentiality in respect of customer information.
- 43.2. Debt collectors must not resort to intimidation or violence, either oral or physical, against any person in their debt recovery actions. In addition, they should not employ harassment or improper debt collection tactics such as the following -
- (a) Harassment tactics
 - (i) putting up posters or writing on the walls of the debtor's residence or other actions designed to humiliate the debtor publicly;
 - (ii) pestering the debtor with persistent phone calls;
 - (iii) making telephone calls at unreasonable hours; and
 - (iv) pestering the debtor's referees, family members and friends for information about the debtor's whereabouts.
 - (b) Other improper tactics
 - (i) using false names to communicate with the debtor;
 - (ii) making anonymous calls and sending unidentifiable notes to the debtor;
 - (iii) making abusive or threatening remarks to the debtor; and
 - (iv) making false or misleading representation with an intent to induce the debtor to make a payment.
- 43.3. Institutions and their debt collection agencies should not try to recover debts, directly or indirectly, from third parties including referees, family members or friends of the debtors if these persons have not entered into a formal contractual agreement with the institutions to guarantee the liabilities of the debtors. Institutions should issue written instructions to their debt collection agencies, or include a clause in the contract with their debt collection agencies, to this effect.
- 43.4. Institutions should enter into a formal, contractual relationship with their third party debt collection agencies. Institutions should specify, either in the contract or by means of written instructions, that the debt collectors employed by the debt collection agencies should, among other things, observe the requirements stated in sections 43.1, 43.2 and 43.3 above.
- 43.5. The contract between institutions and their debt collection agencies should make it clear that the relationship between the institution and the debt collection agency is one of principal and agent. Institutions should remain accountable to customers for any complaints arising out of debt collection by third party debt collection agencies and should not disclaim responsibility for misconduct on the part of the debt collection agencies. Institutions should specify in their contract

with debt collection agencies that the debt collection agencies should not subcontract the collection of debts to any other third parties.

- 43.6. Institutions intending to use third party debt collection agencies should specify in the terms and conditions of credit or card facilities that they may employ third party agencies to collect overdue amounts owed by the customers. Institutions which reserve the right to require customers to indemnify them, in whole or in part, for the costs and expenses they incur in the debt recovery process should include a warning clause to that effect in the terms and conditions.
- 43.7. Institutions should not pass information about referees or third parties other than debtors or guarantors to their debt collection agencies. If the referee is to be approached for information to help locate the debtor or guarantor, this should be done, without causing nuisance to such third parties, by staff of the institution.
- 43.8. Institutions should give the customer advance written notice (sent to the last known address of the customer) of their intention to commission a debt collection agency to collect an overdue amount owed to the institution. The written notice should include the following information -
 - (a) the overdue amount repayable by the customer;
 - (b) the length of time the customer has been in default;
 - (c) the contact telephone number of the institution's debt recovery unit which is responsible for overseeing the collection of the customer's debt to the institution;
 - (d) the extent to which the customer will be liable to reimburse the institution the costs and expenses incurred in the debt recovery process (if the institution requires the customer to indemnify it for such costs and expenses); and
 - (e) that the customer should in the first instance report improper debt recovery actions taken by the debt collection agency to the institution.
- 43.9. Institutions should not engage more than one debt collection agency to pursue the same debt in one jurisdiction at the same time.
- 43.10. Institutions should require their debt collection agencies, when collecting debts, to identify themselves and the institution for whom they are acting. Institutions should issue authorization documents with no account details to their debt collection agencies which should be presented to the debtor upon request for identification purposes.
- 43.11. Institutions should promptly update the amount of repayment(s) made by customers and establish effective communication with their debt collection agencies to update so that the debt collection agencies will stop immediately all recovery actions once the debts are settled in full by the customers.
- 43.12. If a customer owes several debts to more than one institution that are being collected by the same debt collection agency, the customer has the right to give instructions to apply repayment to a particular debt.
- 43.13. Institutions should stop their debt collection activities on a debtor once they become aware that a bankruptcy order has been issued in relation to the debtor.
- 43.14. Where the debt collection process is ongoing, the institution should as far as practicable provide periodic reminders to the customer concerned of the overdue amount repayable by the customer.

44. Management of Debt Collection Agencies

- 44.1. Institutions should have proper systems and procedures in place for the selection of third party debt collection agencies and the monitoring of their performance. These systems and procedures should be subject to regular review and should consist of the following essential elements -
- (a) a review of the background information of the debt collection agency including a company search to identify the owners and directors of the debt collection agency;
 - (b) a basic assessment of the financial soundness of the debt collection agency;
 - (c) a site visit to ascertain the business address of the debt collection agency;
 - (d) an evaluation of the operation of the debt collection agency; and
 - (e) in the case of appointing a new debt collection agency, a procedure to obtain references from at least two of the existing clients (preferably authorized institutions) of the agency.
- 44.2. Institutions should encourage their debt collection agencies to aspire to the highest professional standards and, where appropriate, to invest in suitable systems and technology.
- 44.3. Debt collection agencies should not be given a free hand as to recovery procedures. Institutions should establish effective procedures to monitor continuously the performance of their debt collection agencies, particularly to ensure compliance with the provisions in sections 43.1, 43.2 and 43.3 above.
- 44.4. Institutions should evaluate on a regular basis whether the charges of the debt collection agencies employed by them are reasonable having regard to the prevailing market practices. They should assess the reasonableness of any charge before passing it on to the customer concerned.
- 44.5. Institutions should require debt collection agencies to inform customers that all telephone communication with customers will be tape recorded and the purpose of doing so, and to keep records of all other contacts with customers. Such records should include information on the debt collector making the contact; the date, time and place of contact; and a report on the contact. Both the tape and the records should be kept for a minimum of 30 days after the contact is made.
- 44.6. Institutions should make unscheduled visits to the agencies to inspect their professionalism, operational integrity, the involvement of suitably trained personnel and the adequacy of resources to cope with the business volumes assigned to them and to ensure agencies' compliance with their contractual undertakings.
- 44.7. Institutions should have established procedures to handle complaints received from debtors. They should carry out a careful and diligent inquiry into the complaint to check whether there is any misconduct on the part of the debt collection agency and whether there is any violation of the requirements contained in this Code. Institutions should require debt collection agencies to take appropriate remedial actions if necessary.
- 44.8. Institutions should maintain a register of complaints about improper actions taken by their debt collection agencies and should respond promptly to the complainants after investigation.
- 44.9. Institutions should not delegate authority to debt collection agencies to institute legal proceedings against customers without the institutions' formal approval.
- 44.10. Where institutions are aware that their debt collection agencies perform similar functions for other institutions, the sharing of information as to their performance, approach, attitude, behaviour etc. is encouraged.
- 44.11. Institutions should bring apparently illegal behaviour by debt collection agencies to the attention of the Police. Institutions should also consider whether to terminate the relationship with a debt collection agency if they are aware of unacceptable practices of that agency or breaches of its contractual undertakings.

Chapter 6 - Electronic Banking Services

45. Disclosure for e-banking Services

- 45.1. In addition to the detailed terms and conditions, institutions should make readily available to customers general descriptive information relating to the use of e-banking services (see definition of “Electronic Banking (e-banking) Services” in the definition section). In particular, institutions should make clear and prominent disclosure covering the following issues when a customer enters into an agreement for an e-banking service -
- (a) the customer’s liability for unauthorized transactions;
 - (b) all fees and charges which will apply to the e-banking service;
 - (c) relevant statement(s) in relation to protection of customers’ personal data as required by the Personal Data (Privacy) Ordinance (Cap. 486);
 - (d) customer obligations in relation to security for the e-banking service including observing in a timely manner the relevant security measures specified from time to time by the institutions for the protection of customers; and
 - (e) means for reporting security incidents or complaints.
- 45.2. Institutions should provide, where appropriate, a facility for customers to confirm that they have read such disclosures before they sign up for the service. For example, a confirmation facility may be provided on a web page containing the disclosures to allow customers to declare, by clicking on the facility, that they have read the disclosures therein.

46. Security in relation to e-banking

- 46.1. Institutions should warn customers of the obligation to take reasonable steps to keep any device (for example, personal computers, security devices that generate one-time passwords and smart cards that store digital certificates) or secret code (for example, password) used for accessing e-banking services secure and secret.
- 46.2. Institutions should issue secret codes and other login information (e.g. login ID) separately and take reasonable steps to satisfy themselves that these have been received by customers, whether they are personally collected by customers or delivered by mail. Where secret codes and login information are personally collected, institutions should satisfy themselves as to the identity of the recipient.
- 46.3. Institutions should advise customers of the need to take reasonable steps to keep the device safe and the secret code secret to prevent fraud. In particular, they should advise customers -
- (a) that they should destroy the original printed copy of the secret code;
 - (b) that they should not allow anyone else to use their secret code;
 - (c) never to write down the secret code on any device for accessing e-banking services or on anything usually kept with or near it; and
 - (d) not to write down or record the secret code without disguising it.
- 46.4. When customers are provided with an opportunity to select their own secret codes or login information, institutions should advise customers that it is not suitable to use easily accessible personal information such as telephone numbers or date of birth. Institutions should advise customers not to use the secret codes for accessing other services (for example, connection to the internet or accessing other websites).

- 46.5. Institutions should ensure that transactions of their e-banking services can be traced and checked as long as they are received by their systems.
- 46.6. Customers should be advised to refer to the security advice provided by institutions from time to time. Moreover, institutions should regularly review their security advice to ensure that it remains adequate and appropriate as the technology environment and e-banking services change.

47. Reporting of Actual or Suspected Security Incidents

- 47.1. Customers should be advised that they must inform institutions as soon as reasonably practicable after they find or believe that their secret codes or devices, if any, for accessing the e-banking services have been compromised, lost or stolen, or that unauthorized transactions have been conducted over their accounts.
- 47.2. Institutions should provide an effective and convenient means by which customers can notify the institution of security incidents; facilities such as a telephone hot-line should be available at all times, which will provide for logging and acknowledgement of notifications from customers.
- 47.3. When such facilities are not made available by institutions during particular periods, institutions should be liable for any losses due to non-notification, provided the customer notifies the institution within a reasonable time after the facilities have become available again.
- 47.4. Institutions, on being advised of a loss, theft or possible compromise of a secret code or a device, should take action to prevent further use of the secret code or the device.

48. Liability for Loss

- 48.1. Unless a customer acts fraudulently or with gross negligence such as failing to safeguard properly his device(s) or secret code(s) for accessing the e-banking service, he should not be responsible for any direct loss suffered by him as a result of unauthorized transactions conducted through his account. This provision does not apply to unauthorized transactions conducted through cards which are covered under section 36 above.
- 48.2. Customers should be warned, through clear and prominent notice, that they will be liable for all losses if they have acted fraudulently. Customers may also be held liable for all losses if they have acted with gross negligence (this may include cases where customers knowingly allow the use by others of their device or secret code) or have failed to inform institutions as soon as reasonably practicable after they find or believe that their secret codes or devices for accessing the e-banking services have been compromised, lost or stolen, or that unauthorized transactions have been conducted over their accounts. Customers should be warned that this may apply if they fail to follow the safeguards set out in sections 46.1 and 46.3 above if such failure has caused the losses.

Chapter 7 - Stored Value Cards (or Devices)

49. Application

This chapter applies to the provision of stored value cards or devices either directly by institutions or through their subsidiaries or affiliated companies controlled by them (see definition of “Stored Value Cards (or Devices)” in the definition section).

50. Issue of Stored Value Cards or Devices (SVCs)

50.1. SVC issuers should provide customers with general descriptive information relating to the use of the SVC. Such information should include -

- (a) all fees and charges which will apply, including any annual fee and the basis of determining such fees and charges;
- (b) any deposit payable by customers and the refund procedures;
- (c) any expiry date of the SVC;
- (d) the procedures for stopping the use of the SVC;
- (e) the refund policy in respect of any residual value when the use of the SVC has been suspended or stopped (including where the SVC has expired or has become dormant);
- (f) the potential loss that may be suffered by customers in the case of a loss of the SVC (for example, all the remaining value in the SVC) and the procedures for reporting a loss of the SVC;
- (g) customers’ liability for card damage;
- (h) the customer service hotline provided by the SVC issuer;
- (i) security of the SVC and the related personal identification number;
- (j) the range of use of the SVC (for example, transport services, fast food restaurants); and
- (k) any other services to which SVC holders may have access (for example, ATM).

51. Terms and Conditions and Fees and Charges

51.1. SVC issuers should comply with relevant provisions of Chapter 1.

51.2. SVC issuers should draw the attention of customers or prospective customers to the major terms and conditions of SVCs (for example, by describing or highlighting such terms and conditions in the application forms or promotional leaflets where no application is required. The description should be printed in clear and legible type and in a font size that facilitates easy reading).

51.3. SVC issuers should give customers at least 30 days’ notice before any significant variation of the terms and conditions or any change in the level of fees and charges takes effect. The notice should show clearly the variation and the ways in which customers may seek assistance if they do not agree to the change. Institutions should adopt effective means of notification which would provide reasonable assurance that their customers will be informed of the change and which do not rely unduly on the customers’ own initiative. Individual notification to customers (whether by written notice, statement insert or email message) is likely to be effective in achieving these objectives. But where this is not appropriate on grounds of disproportionate costs or likely ineffectiveness (e.g.

some SVCs are issued in bearer form), institutions may adopt other means of notification, such as one or more of the following -

- (a) press advertisement;
- (b) prominent display of notice in banking halls or major points of card issue and usage; and/or
- (c) notice posted on the website of the institution.

51.4. A copy of the revised terms and conditions should be provided to customers upon their request.

51.5. In case customers do not agree to any significant variation of the terms and conditions, they should be entitled to the full refund of the deposit and any residual value in the SVC.

52. Operation of SVCs

52.1. SVC issuers should not automatically renew a SVC without giving customers at least 30 days' notice commencing from the date of renewal to cancel the SVC without having to pay the renewal fee.

52.2. Where a SVC malfunctions due to no fault on the part of customers, they should be given the choice either to request a replacement free of charge or to cancel the SVC and seek full refund of the deposit and any residual value in the SVC.

52.3. Any expiry date of the SVC should be printed on the SVC.

52.4. For SVCs which can operate as an ATM card, SVC issuers should comply with the relevant provisions in Chapter 3.

52.5. At the time of transactions made by an SVC through any electronic means, the holder of the SVC should be provided with information on the amount being debited from or credited to the SVC.

52.6. Channels should be available for SVC holders to check previous transactions. Such channels may include one or more of the following -

- (a) self-serviced transaction checking machines;
- (b) hotline enquiry;
- (c) service counter enquiry;
- (d) internet checking;
- (e) request by mail; and
- (f) receipt of transaction records.

If there is a charge for the use of a channel, any such charge should be of a reasonable amount.

52.7. Where a transaction cannot be completed successfully and value has mistakenly been deducted from the SVC of the customer, the SVC issuer should take all reasonable steps to alert the customer and reimburse the customer for the loss of the value in the SVC as soon as reasonably practicable.

Annex I - Useful Definitions

These definitions explain the meaning of words and terms used in the Code. They are not precise legal or technical definitions.

Authorized Agents -

Agents authorized by an institution to deal with customers to provide services on its behalf in relation to the provision of banking services, when acting in their capacity as agents for an institution.

Bankers' References -

A banker's reference is an opinion about a particular customer's ability to enter into or repay a financial commitment. It is given by an institution, to an enquirer, with the prescribed consent of the customer concerned. Typically, the reference will cover information confirming that an account is held and how long for. It indicates the customer's financial position but is not intended to be conclusive proof of the customer's position.

Basic Banking Services -

The opening, maintenance and operation of accounts which provide basic banking services, such as deposit, withdrawal and transfer of money.

Cards -

A general term for any plastic card which may be used to pay for goods and services or to withdraw cash. For the purpose of this Code, it excludes stored value cards (see definition of Stored Value Cards below).

Common examples are -

Credit card - a card which allows cardholders to buy on credit and to obtain cash advances. Cardholders receive regular statements and may pay the balance in full, or in part usually subject to a certain minimum. Interest is payable on outstanding balances.

Debit card (including an EPS card) - a card, operating as a substitute for a cheque, that can be used to obtain cash or make a payment at a point of sale. The cardholder's account is debited for such a transaction without deferment of payment.

Cash card (ATM card) - a card used to obtain cash and other services from an ATM.

Credit Reference Agencies -

Any data user who carries on a business of compiling and disseminating personal information, of a factual nature, about the credit history of individuals, whether or not that business is the role or principal activity of that data user.

Cross-border Payments -

Payments in Hong Kong dollars or a foreign currency between Hong Kong and another country.

Customer -

A private individual who -

- (a) maintains an account in Hong Kong (including a joint account with another private individual or an account held as an executor or trustee, but excluding the accounts of sole traders, partnerships, companies, clubs and societies) with, or who receives other services from, an institution; or
- (b) acts as guarantor or provider of third party security (whether or not the guarantor or provider of third party security is a customer of the institution) for a borrower who is an individual or otherwise.

Day -

Day means calendar day if not otherwise specified.

Electronic Banking (e-banking) Services -

Banking services delivered over the internet, wireless network, ATMs, fixed telephone network or other electronic terminals or devices.

Guarantee -

An undertaking given by a person called the guarantor promising to pay the debts of another person if that other person fails to do so.

Institutions -

Authorized institutions authorized under the Banking Ordinance (Cap. 155). These comprise licensed banks, restricted licence banks and deposit-taking companies.

In writing or in written form -

Information can be provided in electronic or in printed form except where specifically indicated that it must be in printed form. Institutions may deliver information to customers electronically provided that the institutions have so notified the customers in advance explicitly and the customers do not object to it. Delivery of information electronically does not include provision of a hyperlink for access to the information at an institution's website, except where a customer applies for a banking service online.

Out of date (stale) Cheque -

A cheque which cannot be paid because its date is too old or "stale", normally more than 6 months old.

Personal Identification Numbers (PINs) -

Confidential numbers provided on a strictly confidential basis by card issuers to cardholders. Use of this number by the customer will allow the card to be used either to withdraw cash from an ATM or to authorize payment for goods or services in retail or other outlets, by means of a special terminal device.

Post-dated Cheque -

A cheque which cannot be paid because its date is some time in the future.

Prescribed Consent -

Express consent of a customer given voluntarily.

Promotional Material -

Any literature or information which is designed to help sell a product or service to a customer. This does not include information relating to service enhancements and changes to customers' existing accounts which need to be sent to the customers to meet legislative and regulative requirements or which may be sent where it is in the interest of customers.

Related Companies -

This refers to an institution's subsidiary, holding company or a subsidiary of the holding company.

Security -

A word used to describe the mortgaging or charging of assets, such as (but not limited to) properties, life policies and shares to institutions as support for loans granted to customers. If the loans are not repaid the institution's position is "secured" which means that it can sell the assets to meet the amount outstanding on the loan.

Stored Value Cards (or Devices) (SVCs) -

A card or device on which data may be stored in electronic, magnetic or optical form and for or in relation to which a person pays a sum of money to the issuer of the card in exchange for the storage of that value in the card and an undertaking by the issuer that on the production of the card, the issuer or any third party will supply goods or services.

Third Party Security -

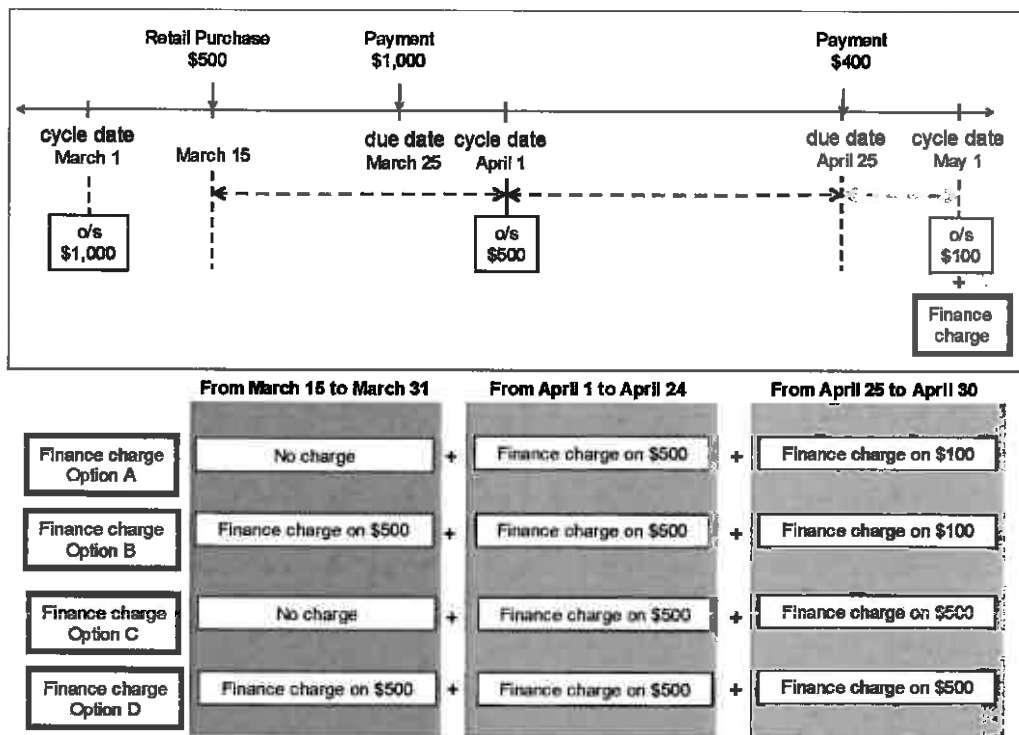
Security provided by a person who is not the borrower.

Annex II - Ban on Double-Cycle Billing

Assume that the billing cycle on a credit card account starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the customer will not be charged interest on purchases if the balance at the end of a billing cycle is paid in full by the following payment due date (in other words, the consumer receives a grace period).

The customer uses the credit card to make a \$500 purchase on March 15. The customer pays the balance for the February billing cycle in full on March 25. At the end of the March billing cycle (March 31), the customer's balance consists only of the \$500 purchase and the customer will not be charged interest on that balance if it is paid in full by the following due date (April 25). However, the customer only pays \$400 on April 25, leaving a \$100 balance.

A schematic diagram is provided for this illustrated example -



Option A should be adopted. Options B, C and D, representing double-cycle billing practices, are prohibited.

Interpretations -

Option (A) is not subject to double-cycle billing.

Option (B) is subject to double-cycle billing because finance charge is accrued on balances for days in the billing cycle that precedes the most recent billing cycle.

Option (C) is subject to double-cycle billing because finance charge is accrued on the portion of the balance repaid prior to the expiration of the grace period.

Option (D) is subject to double-cycle billing because it touches upon the double-cycle billing practices mentioned in (B) and (C).

Annex III - Recommended template on monthly statements

Assumptions -

- Outstanding Balance = \$20,000
- Interest Rate = 30% p.a.
- No new transaction
- No annual fee and other fees
- Repayments are due on the 26th day after the statement date, and it is assumed that repayments are made on or before the due date.

If you make no additional charges using this card and each month you pay...	You will pay off the outstanding balance of \$20,000 in about...	and you will end up paying an estimated total of...
Only the minimum payment	26 years	\$67,537
\$849	3 years	\$30,565 (Savings = \$36,972)

To calculate the above information applicable to your specific case, please use our online calculator accessible from our website [relevant URL of the institution's website]

Annex 3
(REDACTED)

Annex 4

LIST OF LICENSED BANKS, RESTRICTED LICENSE BANKS AND DEPOSIT TAKING COMPANIES AS OF 30 NOVEMBER 2017

Annex 4 - List of Licensed Banks, Restricted Licence Banks and Deposit Taking Companies

List of Licensed Banks **At 30 November 2017**

Incorporated in Hong Kong

BANK OF CHINA (HONG KONG) LIMITED
BANK OF EAST ASIA, LIMITED (THE)
BANK OF COMMUNICATIONS (HONG KONG) LIMITED
CHINA CITIC BANK INTERNATIONAL LIMITED
CHINA CONSTRUCTION BANK (ASIA) CORPORATION LIMITED
CHIYU BANKING CORPORATION LIMITED
CHONG HING BANK LIMITED
CITIBANK (HONG KONG) LIMITED
DAH SING BANK LIMITED
DBS BANK (HONG KONG) LIMITED
FUBON BANK (HONG KONG) LIMITED
HANG SENG BANK, LIMITED
HONGKONG & SHANGHAI BANKING CORPORATION LIMITED (THE)
INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED
NANYANG COMMERCIAL BANK, LIMITED
OCBC WING HANG BANK LIMITED
PUBLIC BANK (HONG KONG) LIMITED
SHANGHAI COMMERCIAL BANK LIMITED
STANDARD CHARTERED BANK (HONG KONG) LIMITED
TAI SANG BANK LIMITED
TAI YAU BANK, LIMITED
WING LUNG BANK LIMITED

Incorporated outside Hong Kong

ABN AMRO BANK N.V.
AGRICULTURAL BANK OF CHINA LIMITED
ALLAHABAD BANK
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
AXIS BANK LIMITED
BANCA MONTE DEI PASCHI DI SIENA S.P.A.
BANCO BILBAO VIZCAYA ARGENTARIA S.A.
BANCO SANTANDER, S.A.
BANGKOK BANK PUBLIC COMPANY LIMITED
BANK OF AMERICA, NATIONAL ASSOCIATION
BANK OF BARODA
BANK OF CHINA LIMITED
BANK OF COMMUNICATIONS CO., LTD.
BANK OF INDIA
BANK OF MONTREAL
BANK OF NEW YORK MELLON (THE)
BANK OF NOVA SCOTIA (THE)
BANK OF SINGAPORE LIMITED
BANK OF TAIWAN
BANK OF TOKYO-MITSUBISHI UFJ, LTD. (THE)
BANK J. SAFRA SARASIN AG
ALSO KNOWN AS:
BANQUE J. SAFRA SARASIN SA
BANCA J. SAFRA SARASIN SA
BANK J. SAFRA SARASIN LTD
BANK JULIUS BAER & CO. LTD.
BANK SINOPAC
BARCLAYS BANK PLC
BDO UNIBANK, INC.
ALSO KNOWN AS :
BDO
BDO UNIBANK
BDO DE ORO

BANCO DE ORO UNIBANK
 BDO BANCO DE ORO
 BNP PARIBAS
 BNP PARIBAS SECURITIES SERVICES
 BSI LTD
 ALSO KNOWN AS:
 BSI AG
 BSI SA
 CA INDOSUEZ (SWITZERLAND) SA
 CANADIAN IMPERIAL BANK OF COMMERCE
 CANARA BANK
 CATHAY BANK
 CATHAY UNITED BANK COMPANY, LIMITED
 CHANG HWA COMMERCIAL BANK LTD.
 CHIBA BANK, LTD. (THE)
 CHINA CONSTRUCTION BANK CORPORATION
 CHINA DEVELOPMENT BANK CORPORATION
 CHINA EVERBRIGHT BANK CO., LTD
 CHINA MERCHANTS BANK CO., LTD.
 CHINA MINSHENG BANKING CORP., LTD.
 CHUGOKU BANK, LTD. (THE)
 CIMB BANK BERHAD
 CITIBANK, N.A.
 COMMERZBANK AG
 COMMONWEALTH BANK OF AUSTRALIA
 COÖPERATIEVE RABOBANK U.A.
 COUTTS & CO AG
 ALSO KNOWN AS:
 COUTTS & CO SA
 COUTTS & CO LTD
 CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK
 CREDIT INDUSTRIEL ET COMMERCIAL
 CREDIT SUISSE AG
 CTBC BANK CO., LTD.
 DBS BANK LTD.
 DEUTSCHE BANK AKTIENGESELLSCHAFT
 DZ BANK AG DEUTSCHE ZENTRAL-GENOSSENSCHAFTSBANK, FRANKFURT AM MAIN
 E.SUN COMMERCIAL BANK, LTD.
 EAST WEST BANK
 EDMOND DE ROTHSCHILD (SUISSE) S.A.
 EFG BANK AG
 ALSO KNOWN AS:
 EFG BANK SA
 EFG BANK LTD
 ERSTE GROUP BANK AG
 FAR EASTERN INTERNATIONAL BANK
 FIRST COMMERCIAL BANK, LTD.
 HACHIJUNI BANK, LTD. (THE)
 HDFC BANK LIMITED
 HONG LEONG BANK BERHAD
 HSBC BANK INTERNATIONAL LIMITED
 HSBC BANK PLC
 HSBC BANK USA, NATIONAL ASSOCIATION
 HSBC PRIVATE BANK (SUISSE) SA
 HUA NAN COMMERCIAL BANK, LTD.
 ICBC STANDARD BANK PLC
 ICICI BANK LIMITED
 INDIAN OVERSEAS BANK
 INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED
 INDUSTRIAL BANK CO., LTD.
 INDUSTRIAL BANK OF KOREA
 ING BANK N.V.
 INTESA SANPAOLO SPA

IYO BANK, LTD. (THE)
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
KBC BANK N.V.
KEB HANA BANK
KOOKMIN BANK
LAND BANK OF TAIWAN CO., LTD.
LGT BANK AG
ALSO KNOWN AS:
LGT BANK LTD.
LGT BANK SA
MACQUARIE BANK LIMITED
MALAYAN BANKING BERHAD
MASHREQ BANK - PUBLIC SHAREHOLDING COMPANY
ALSO KNOWN AS: MASHREQBANK PSC
MEGA INTERNATIONAL COMMERCIAL BANK CO., LTD.
MELLI BANK PLC
MITSUBISHI UFJ TRUST AND BANKING CORPORATION
MIZUHO BANK, LTD.
NATIONAL AUSTRALIA BANK, LIMITED
NATIONAL BANK OF ABU DHABI
NATIONAL BANK OF PAKISTAN
NATIXIS
O-BANK CO., LTD.
OVERSEA-CHINESE BANKING CORPORATION LTD.
PHILIPPINE NATIONAL BANK
PICTET & CIE (EUROPE) S.A.
PT. BANK NEGARA INDONESIA (PERSERO) TBK.
PUNJAB NATIONAL BANK
ROYAL BANK OF CANADA
ROYAL BANK OF SCOTLAND N.V. (THE)
ROYAL BANK OF SCOTLAND PUBLIC LIMITED COMPANY (THE)
SHANGHAI COMMERCIAL & SAVINGS BANK, LTD. (THE)
SHANGHAI PUDONG DEVELOPMENT BANK CO. LTD.
SHIGA BANK, LTD. (THE)
SHINHAN BANK
SHIZUOKA BANK, LTD. (THE)
SKANDINAVISKA ENSKILDA BANKEN AB
SOCIETE GENERALE
STANDARD CHARTERED BANK
STATE BANK OF INDIA
STATE STREET BANK AND TRUST COMPANY
SUMITOMO MITSUI BANKING CORPORATION
SUMITOMO MITSUI TRUST BANK, LIMITED
SVENSKA HANDELSBANKEN AB (PUBL)
TA CHONG BANK, LTD.
TAIPEI FUBON COMMERCIAL BANK CO., LTD.
TAISHIN INTERNATIONAL BANK CO., LTD
TAIWAN BUSINESS BANK
TAIWAN COOPERATIVE BANK, LTD.
TAIWAN SHIN KONG COMMERCIAL BANK CO., LTD.
TORONTO-DOMINION BANK
UBS AG
UCO BANK
UNICREDIT BANK AG
UNION BANCAIRE PRIVEE, UBP SA
ALSO KNOWN AS: UNITED PRIVATE BANK, UBP LTD
UNION BANK OF INDIA
UNITED OVERSEAS BANK LTD.
WELLS FARGO BANK, NATIONAL ASSOCIATION
WESTPAC BANKING CORPORATION
WOORI BANK

List of Restricted Licence Banks
At 30 November 2017

Incorporated in Hong Kong

ALLIED BANKING CORPORATION (HONG KONG) LIMITED
BANC OF AMERICA SECURITIES ASIA LIMITED
BANK OF CHINA INTERNATIONAL LIMITED
BANK OF SHANGHAI (HONG KONG) LIMITED
CITICORP INTERNATIONAL LIMITED
GOLDMAN SACHS ASIA BANK LIMITED
HABIB BANK ZURICH (HONG KONG) LIMITED
J. P. MORGAN SECURITIES (ASIA PACIFIC) LIMITED
KDB ASIA LIMITED
MORGAN STANLEY ASIA INTERNATIONAL LIMITED
NIPPON WEALTH LIMITED
ORIX ASIA LIMITED
SCOTIABANK (HONG KONG) LIMITED
SOCIETE GENERALE ASIA LIMITED

Incorporated outside Hong Kong

EUROCLEAR BANK
KASIKORNBANK PUBLIC COMPANY LIMITED
PT. BANK MANDIRI (PERSERO) TBK
RBC INVESTOR SERVICES BANK S.A.
SIAM COMMERCIAL BANK PUBLIC COMPANY LTD. (THE)

List of Deposit-taking Companies
At 30 November 2017

Incorporated in Hong Kong

BCOM FINANCE (HONG KONG) LIMITED
BPI INTERNATIONAL FINANCE LIMITED
CHAU'S BROTHERS FINANCE COMPANY LIMITED
CHONG HING FINANCE LIMITED
COMMONWEALTH FINANCE CORPORATION LIMITED
CORPORATE FINANCE (D.T.C.) LIMITED
FUBON CREDIT (HONG KONG) LIMITED
GUNMA FINANCE (HONG KONG) LIMITED
HABIB FINANCE INTERNATIONAL LIMITED
HENDERSON INTERNATIONAL FINANCE LIMITED
HKCB FINANCE LIMITED
KEB HANA GLOBAL FINANCE LIMITED
KEXIM ASIA LIMITED
PUBLIC FINANCE LIMITED
SHINHAN ASIA LIMITED
VIETNAM FINANCE COMPANY LIMITED
WOORI GLOBAL MARKETS ASIA LIMITED

Incorporated outside Hong Kong

Nil

Annex 5
(REDACTED)

Annex 6
(REDACTED)

Annex 7
(REDACTED)

Annex 8

**PRESS RELEASE ISSUED BY HKAB, DTCA AND THE HKMA
ON 11 JULY 1997**

Press Releases

Issuance of the Code of Banking Practice

The Code of Banking Practice ("the Code") is issued jointly by the Hong Kong Association of Banks (HKAB) and the Deposit-taking Companies Association (DTCA) today (July 11) after an extensive consultation exercise.

Both Mr Chris Langley, chairman of HKAB and Mr Alex Au, chairman of DTCA expressed full support to the Code and said their members would take active steps to comply with it as quickly as possible.

Mr Raymond Li, Executive Director (Banking Policy) of the Hong Kong Monetary Authority (HKMA) welcomed the issue of the Code.

"The Code will further enhance the transparency and quality of banking services in Hong Kong," said Mr Li. "We fully endorse the provisions of the Code and we will monitor compliance as part of our regular supervision," he added.

The Code has been developed by a Working Group comprising representatives of the industry associations and the HKMA. The Code comprises five chapters:

- Relationship between banks and customers
- Opening and operation of accounts and loans
- Card services
- Payment services
- Debt collection.

A draft of the Code was issued to the industry associations and other interested parties for consultation in January this year. Extensive comments were received during the consultation period. This has greatly assisted in improving the draft Code. As in other financial centres, the Code will be subject to review and revision from time to time in the light of operational experience and market developments.

The Code will be available to the public through designated branches of the HongkongBank:

- 3rd Floor, 1 Queen's Road Central, Hong Kong;
- Mongkok Office - 673 Nathan Road, Kowloon; and
- Shatin Centre - Shop 30D, Level 3, Shatin Centre Shopping Arcade, N.T.

The Code is also accessible through the HKMA internet Website (<http://www.info.gov.hk/hkma>).

**Hong Kong Association of Banks
Deposit-taking Companies Association
Hong Kong Monetary Authority
11 July 1997**

Annex 9

**PRESS RELEASE ISSUED BY THE HKMA, HKAB AND DTCA
ON 15 NOVEMBER 2001**

Press Releases

Revised Code of Banking Practice

The Hong Kong Monetary Authority (HKMA), jointly with the Hong Kong Association of Banks (HKAB) and the DTCA Association (DTCA), today (Thursday) announced the launch of the revised Code of Banking Practice ("the Code"). The Code is issued by HKAB and the DTCA and endorsed by the HKMA.

This is the first comprehensive review since the Code was first issued in 1997. The review was conducted by an Informal Working Group (IWG), convened by the HKMA and comprising representatives of HKAB and the DTCA. The IWG aimed at strengthening the provisions of the Code in the light of its operation in the past three years and to keep up to date with the latest developments of the banking industry. Major revisions to the Code include provisions which aim at:

- making terms and conditions of banking services more transparent and consumer-friendly
- enhancing the transparency of new or revised charges of authorized institutions
- standardising the calculation of annualised percentage rates for credit card borrowing and personal loans
- bringing the approach to card services in Hong Kong more in line with that in other financial centres
- promoting the proper use of debt collection agencies by institutions
- enhancing the standards of emerging banking services such as e-banking and stored value cards.

The IWG consulted the industry Associations and the Consumer Council extensively throughout the review with the objective of ensuring that the revised Code strikes a reasonable balance between consumer rights on the one hand and efficiency of banking operations on the other.

"The revisions to the Code should help to further enhance high standards of conduct and sound and prudent business practices amongst authorized institutions," said Mr Simon Topping, Executive Director (Banking Policy) of the HKMA and Chairman of the IWG.

The revised Code is effective from 1 December 2001. Authorized institutions are expected to comply with the new provisions as quickly as possible and by 1 June 2002 at the latest. Another 6 months is allowed for compliance with those revised provisions that require system changes. The provisions relating to card services and adjustment of fees and charges, which were promulgated in January and May 2001 respectively, are already effective. All authorized institutions will be required to submit to the HKMA an annual assessment of their compliance with the Code.

Going forward, HKAB, in conjunction with the DTCA, will assume greater ownership of the Code. Mr Peter Wong, Chairman of HKAB said, "A new Code of Banking Practice Committee comprising representatives of HKAB, the DTCA and the HKMA has been established. The Committee will continue to review and develop the Code in response to market changes and the changing needs of consumers."

Mr Cliff Forster, Chairman of the DTCA and a member of the IWG said, "We believe the Code will provide additional guidance to institutions in providing quality banking services to consumers and help enhance the overall level of service within the industry."

The Code can be viewed or downloaded from the websites of the HKMA (www.info.gov.hk/hkma/eng/public/cbp_2001/cbp_eng.pdf), HKAB (www.hkab.org.hk) and the DTCA (www.dtca.org.hk).

For further enquiries, please contact:

Jasmin Fung, Manager (Press), at 2878 8246 or
Thomas Chan, Senior Manager (Press), at 2878 1480

Issued jointly by

Hong Kong Monetary Authority
Hong Kong Association of Banks
Deposit-taking Companies Association

15 November 2001

Related documents:

1. Code of Banking Practice. (PDF, 397K)
2. Powerpoint presentation by Mr Simon Topping, Executive Director (Banking Policy) of the HKMA at the Joint Press Conference on 15 Nov 2001. (Powerpoint, 69K)
3. Letter to all Authorised Institutions, 15 Nov 2001.

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Annex 10

PRESS RELEASE ISSUED BY HKAB ON 31 DECEMBER 2008



Press Release
31 December 2008

Revised Code of Banking Practice

The Hong Kong Association of Banks (HKAB) and the DTC Association (DTCA) today jointly announced the launch of a revised Code of Banking Practice (the Code) which will take effect from 2 January 2009. The revised Code has been produced following a comprehensive review of the existing Code by the Code of Banking Practice Committee (CBPC), which has representatives from HKAB, the DTCA and the Hong Kong Monetary Authority.

The main objective of the current review was to clarify and enhance the provisions of the Code in the light of recent developments in the banking sector. Among the major improvements are:

- the introduction of a new section to require Authorized Institutions (AIs), which include licensed banks, restricted licence banks and deposit-taking companies to give reasonable notice, normally not less than 2 months, to customers before closing a branch. The notice should be prominently displayed on the branch premises and should contain details of how the AI may continue to provide services to customers and provide contact information in case of enquiries by customers;
- the rewriting of the provisions relating to guarantees and third party securities to make them more reader friendly. These provisions were introduced in 2003 to enhance the protection of guarantors. One of the requirements is that AIs should offer a choice between a limited or unlimited guarantee to any person proposing to give a guarantee or third party security. In the case of an unlimited guarantee, AIs are required to notify the guarantor as soon as reasonably practicable when further facilities are extended to the borrower;
- the updating of the chapter on "stored value cards" to offer more protection to stored value cardholders through various measures, including the provision of channels to check previous transactions and the requirement to reimburse the cardholder as soon as reasonably practicable where a transaction cannot be completed successfully but value has been deducted from the stored value card;



- the enhancement of the provisions relating to security advice for cards and e-banking services to provide more guidance to facilitate compliance by AIs as well as to make it easier for customers to understand what they should, and should not, do in order not to compromise the security of their card and e-banking transactions;
- the expansion of the provision in relation to advertising and promotional materials of AIs to make it clear that where benefits offered are subject to conditions, such conditions should be clearly displayed in the advertisement wherever practicable, or the advertisement should include reference to the means by which further information may be obtained; and
- the expansion of the provision regarding notice on dormant account charges to require AIs to also advise customers of what can be done to avoid such charges or where they can obtain such information.

The Consumer Council has been consulted during the development of the revised Code. Its comments have been taken on board where the CBPC considers appropriate.

AIs are expected to take steps to comply with the revised provisions as quickly as possible and achieve full compliance within 6 months from the effective date at the latest. Another 6 months is allowed for compliance with those revised provisions which require system changes.

The CBPC will continue to review and develop the Code in response to market developments and the changing needs of customers.

The revised Code can be viewed or downloaded from the websites of HKAB (at www.hkab.org.hk) and the DTCA (at www.dtca.org.hk). In addition, all AIs should make copies of the Code available to customers or inform them how to obtain copies.

For any questions, please contact Ms Eva Wong, Secretary of HKAB (at 2521 1169) or Mr. P.C. Lund, Secretary of DTCA (at 2526 4079).

- End -

Annex 11

PRESS RELEASE ISSUED BY THE HKMA ON 6 FEBRUARY 2015

Press Releases

Comprehensive Review of Code of Banking Practice

The Hong Kong Monetary Authority (HKMA) welcomes the launch of the revised Code of Banking Practice ("Code") by the Hong Kong Association of Banks (HKAB) and the DTC Association (DTCA) today. The Code is issued by HKAB and the DTCA and endorsed by the HKMA.

The Code is revised after a comprehensive review undertaken by the Code of Banking Practice Committee comprising representatives of HKAB, the DTCA and the HKMA. The review aimed at providing a wider protection to customers, promoting good banking practices as well as enhancing the provisions of the Code to align with international standards on financial consumer protection.

Major enhancements to the Code, covering a wide range of banking products and services, include:

- extending the coverage of the Code to subsidiaries and affiliated companies controlled by authorized institutions (AIs). In other words, AIs will be required to ensure that their subsidiaries and affiliated companies also observe all requirements and good practices as set out in the Code when providing banking services (e.g. lending) in Hong Kong;
- incorporating the *G20 High-level Principles on Financial Consumer Protection*¹ as general principles for AIs to observe when providing products and services to their customers, thereby helping to promote international good banking practices in Hong Kong, including important areas of disclosure and transparency, responsible business conduct, and financial education;
- enhancing the disclosure and transparency about terms and conditions by AIs, which include the provision of new standardized Key Facts Statements by AIs setting out major terms and conditions of loan products to allow customers to easily access and compare details of such products, as well as explaining any revisions of terms and conditions of banking services;
- enhancing credit card related practices of AIs, which includes (i) to obtain the consent of the customers for upgrade and replacement of credit cards; (ii) to terminate non-activated cards after reminders for activation have been sent to the cardholders, hence non-activated cards will not be auto-renewed; and (iii) not to levy annual fees on non-activated cards; and
- providing more explanation on the customer due diligence requirements in relation to the opening of accounts, which would help members of the public to have a better understanding of the requirements and the basic types of documents which may be required of them for such purposes.

Mr Norman Chan, Chief Executive of the HKMA, said, "In the wake of the global financial crisis, considerable international efforts have been directed to, amongst other things, the strengthening of financial consumer protection. In this connection, the HKMA has also taken a proactive approach and seek to cultivate a culture of treating customers fairly in the banking industry. The enhancement of the Code of Banking Practice is another milestone, further to the launch of the Treat Customers Fairly Charter in 2013, in strengthening banks' corporate culture to take good care of the interests of customers in their day-to-day business dealings."

"I am pleased that the Code is enhanced to provide better protection for financial consumers in line with the evolving customers' needs, and to align with good international practices promulgated by the G20.", Mr Chan added. "The HKMA will continue to work with the industry and the relevant stakeholders to promote bank consumer protection and good business practices."

The revised Code is effective from 6 February 2015. AIs are expected to achieve full compliance with the new provisions as quickly as possible within 6 months of the effective date. Another 6 months is allowed for compliance with those provisions that require system changes. The HKMA will monitor compliance as part of its ongoing supervision of AIs.

A copy of the revised Code can be found at: http://www.hkma.gov.hk/media/eng/doc/code_eng.pdf.

Hong Kong Monetary Authority
6 February 2015

¹ The HKMA participated in the international discussion of *G20 High-level Principles on Financial Consumer Protection* as well as the *Effective Approaches to Implement the High-Level Principles* as endorsed by G20 Leaders. The ten *G20 High-level Principles on Financial Consumer Protection* cover areas of importance to Hong Kong including disclosure and transparency, responsible business conduct, and financial education. For details, please refer to the OECD website at: <http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>.

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Annex 12
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Annex 13

**RELEVANT EXTRACTS FROM THE HKMA'S ANNUAL REPORTS IN
RELATION TO OVERALL RESULTS OF AI SELF-ASSESSMENT
PROGRAMMES FOR THE YEARS 2002 TO 2013**

Year	Overall results of AI self-assessment programmes	Source
2002-2003	The overall state of compliance with the Code of Banking Practice improved further in 2003, as shown in the second self-assessment conducted by AIs covering the period between June 2002 and May 2003. Virtually all AIs (99%) reported either full or almost full compliance (i.e. less than five instances of non-compliance) with the Code, compared with 90% in 2002. Where non-compliant areas were identified, AIs were required to take prompt action to rectify the situation.	HKMA Annual Report 2003
2003-2004	The overall level of compliance with the Code remained high, as reflected by the results of the annual self-assessments conducted by AIs covering the period between June 2003 and May 2004. In the past two years, 99% of AIs reported either full or largely full compliance (that is, fewer than five instances of noncompliance) with the Code. Where noncompliant areas were identified, AIs were required to take prompt action to rectify the situation.	HKMA Annual Report 2004
2004-2005	The banking industry has completed the annual self-assessment of compliance with the Code of Banking Practice covering the period from June 2004 to May 2005. A total of 177 AIs providing personal banking services conducted the self-assessment, 151 of which reported full compliance with the Code. The rest of the AIs had five or fewer instances of non-compliance. The main area of non-compliance related to the terms and conditions of banking services. In a separate review conducted in early 2005, 98 AIs' terms and conditions of banking services (other than safe deposit box services) were found to contain exemption of liability clauses which were inconsistent with the Code. As for systems of control for monitoring compliance with the Code, all AIs reported they had adequate internal procedures and management oversight to ensure compliance. New products were reviewed to ensure compliance with the Code before they were launched. The results of the review were broadly in line with the previous year.	HKMA Annual Report 2005
2005-2006	The banking industry completed the annual self-assessment of compliance with the Code of Banking Practice covering the period from June 2005 to May 2006. One hundred and seventy-two AIs providing personal banking services conducted the self-assessment. One hundred and fifty AIs reported full compliance with the Code, 19 identified five or fewer instances of noncompliance and three identified more than five. The main areas of non-compliance related to the	HKMA Annual Report 2006

Year	Overall results of AI self-assessment programmes	Source
	advance of loans and overdrafts, and terms and conditions of banking services. Most AIs reported they had adequate systems of control and management oversight to ensure compliance with the Code. As soon as AIs identified noncompliance, the HKMA required them to take prompt remedial action.	
2005-2006	The industry's overall state of compliance with the Code has continued to improve since the introduction of the self-assessment in 2001-2002. The proportion of AIs reporting full or almost full compliance (with five or fewer instances of non-compliance) with the Code increased from 90% to 98.3% in 2005-2006. As a result, the HKMA has reduced the frequency of the self-assessment exercise from every year to every two years.	HKMA Annual Report 2007
2006-2008	The industry's overall state of compliance with the Code of Banking Practice remained satisfactory. In the industry's self-assessment covering the period from June 2006 to May 2008, approximately 98% of AIs reported full compliance, or almost full compliance ¹ , with the Code.	HKMA Annual Report 2009
2008-2009	In the industry's self-assessment covering the period from June 2008 to December 2009, all AIs reported full compliance, or almost full compliance ² , with the Code of Banking Practice.	HKMA Annual Report 2010
2010	In the industry's self-assessment covering the period from 1 January to 31 December 2010, all AIs reported full, or almost full, compliance ³ with the Code. At the HKMA's request, the Code of Banking Practice Committee started a review of the Code to further enhance the standard of banking practices. The review will continue in 2012 with the HKMA participating as a member of the Committee.	HKMA Annual Report 2011
2011	The industry's overall compliance with the Code of Banking practice remained satisfactory. In the industry's self-assessment covering the period from 1 January to 31	HKMA Annual Report 2012

¹ With five or fewer instances of non-compliance.

² With five or fewer instances of non-compliance.

³ With five or fewer instances of non-compliance.

Year	Overall results of AI self-assessment programmes	Source
	December 2011, all AIs reported full, or almost full, compliance. ⁴	
2012	The industry's overall compliance with the Code of Banking Practice remained satisfactory. In the industry's self-assessment covering the period from 1 January to 31 December 2012, all AIs reported full, or almost full, compliance ⁵ . The non-compliance issues reported mostly concerned transparency and disclosure of information and the related policies and procedures. The AIs concerned have taken active steps to address the issues.	HKMA Annual Report 2013
2013	The industry's overall compliance with the Code of Banking practice remained satisfactory. In the industry's annual self-assessment, covering the period from 1 January to 31 December 2013, all AIs reported full, or almost full, compliance ⁶ . The non-compliance issues reported mostly involved transparency and disclosure of information and the related policies and procedures. The AIs concerned have taken steps to address the issues.	HKMA Annual Report 2014

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⁴ With five or fewer instances of non-compliance.

⁵ With seven or fewer instances of non-compliance.

⁶ With five or fewer instances of non-compliance.

Annex 14

THE HKMA'S LETTER DATED 14 FEBRUARY 2017



HONG KONG MONETARY AUTHORITY
香港金融管理局

Our Ref: B1/C1

14 February 2017

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

Clarification of sections 22.5 and 22.12 of the Code of Banking Practice (CoBP)

I am writing to clarify our supervisory expectation in relation to sections 22.5 and 22.12 of the CoBP as recent enquiries and complaints indicated that some authorized institutions (AIs) may not fully appreciate the policy intention of these provisions. I have written to the Hong Kong Association of Banks and the DTC Association and requested them to arrange for the amendment of the two sections immediately.

For section 22.12 of the CoBP regarding fire insurance for mortgaged properties, it requires AIs to be transparent and flexible in providing options of insured amount for customers to choose under the overarching principle that the amount should be reasonable and of mutual agreement. An insured amount based on reinstatement cost is provided in the section as one of the examples of reasonable insured amounts as it would normally be the most appropriate to protect customers and AIs from the risks of fire or other serious damage to a mortgaged property and to put both parties back to their positions before fire or other serious damage. In practice, however, we note that there are circumstances where customers prefer not to choose this option or other options provided in the section. This may be because in some cases, a high annual valuation fee is charged where reinstatement cost is involved or the current loan value is far below reinstatement cost. Under these circumstances, on a correct interpretation of the section, customers and their AIs can mutually agree on a reasonable amount other than the three examples provided in the section. But from the enquiries and complaints recently lodged with the Hong Kong Monetary Authority (HKMA), we note that some AIs refused to provide other reasonable options to accommodate customers' preferences, claiming that the three options provided in the section represent an exhaustive list of permissible insured amounts under the requirement of the CoBP.

To clarify the policy intention of the section, we consider that the following amendments (marked in tracked changes) are necessary. We expect that AIs should come to mutual agreement with their customers on a reasonable insured amount after taking into account the circumstances of each case and, where relevant, explaining clearly to customers the implications of not basing the insured amount on reinstatement cost.

"The amount and the nature of risks to be insured during the term of the loan should be reasonable and should be a matter of mutual agreement between institutions and their customers. Institutions should provide an option for the customers or prospective customers to choose whether the insured amount should be based on, for example, the original loan value, the current loan value ~~(provided it is not below the cost of reinstating the property)~~ or the cost of reinstating the property, and should inform them if any options involve of any extra costs or fees involved (for example, ~~annual valuation fees~~) ~~for the latter two options.~~"

For the avoidance of doubt, the different options provided in the section are meant to be examples, while AIs should follow the overarching principle of reasonableness and mutual agreement when dealing with customers. It should also be noted that the above revision to the wording is intended to be a quick clarification while AIs should continue to explore any measures that can further benefit both customers and AIs.

The HKMA also considers a textual amendment to section 22.5 (marked in tracked change below) necessary to clarify the policy intention which is to enhance transparency:

"Institutions should inform customers and prospective customers ~~that~~ if they have to pay for the legal expense of both the solicitors who represent themselves and the solicitors who represent the institutions to prepare mortgages on properties."

Given the clarification of the policy intention, AIs are expected to amend their relevant customer communication materials according to the revised sections 22.5 and 22.12 with immediate effect and strengthen staff training to ensure correct interpretation and implementation of the two sections. If there are enquiries or complaints attributable to AIs' incorrect interpretation of section 22.12, the AIs concerned should look into the situation and follow up as appropriate.

We will continue to review the CoBP in view of new developments and overseas experiences, monitor AIs' compliance with the CoBP as part of our supervisory work, and follow up with individual AIs on cases of non-compliance or misinterpretation of the CoBP clauses.

Yours sincerely,

Arthur Yuen
Deputy Chief Executive

Annex 15
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