COMPLAINTS AGAINST BANKS AND THE ROLE OF THE HKMA[1]

This speech discusses the powers of the HKMA under the Banking Ordinance, and the limited role played by the HKMA in dealing with bank consumer complaints in the absence of an explicit legal mandate for consumer protection. It also notes the consensus in the banking industry and the community generally for a self-regulatory approach in the industry to handling complaints, and suggests how this might best be pursued.

I am delighted to have this opportunity to speak to you at this half-yearly dinner, and I am grateful to the organisers for choosing an evening that does not happen to coincide with the quarter-finals, semi-finals or final of the World Cup. This has, I am sure you will agree, been an exciting tournament so far. One of its striking features has been the record number of yellow and red cards issued to players by referees for fouls, unsporting behaviour and other forms of misconduct. The reasons put forward include worsening behaviour on the playing field, stricter application of the rules by referees, and a greater tendency among players to complain about real or imagined grievances.

Whether all this is good or bad for the game is a matter of debate: it certainly makes for interesting television. But it is not just in the world of football that we see a rise in grievances and complaints. It is a phenomenon affecting many areas of life in Hong Kong, including the relationship between consumers and their banks. Complaints against banks are on the increase. We may take some comfort from the fact that, when set against the millions of banking consumer transactions that take place every day, they still form a very small number. There are also many ways of explaining the increase before we start to point to the possibility of declining standards of service. But the increase is a matter of concern to the HKMA, not least because, although we are subject to just as much public scrutiny as the football referees, we do not possess their almost unlimited powers of decision.

Around a year ago I spoke at your half-yearly dinner on the subject of consumer protection and the banking industry. In that speech I set out the various options identified by the HKMA for a more effective handling of consumer complaints against banks. Today I am going to address the same subject. You might be wondering whether I am running out of topics, or whether the HKMA has got stuck in a groove. But I raise the subject again for three reasons:

First, while there has been some enhancement and standardisation of the procedures for handling complaints by the banks themselves, through the HKMA's guideline on the subject issued in February, and through the industry's own Code of Banking Practice, the basic question of what to do with complaints that are not resolved by individual banks remains unanswered. Other than the courts, there is no external dispute resolution mechanism for bank customers in Hong Kong.

Secondly, the number of complaints against banks received by the HKMA has increased almost twofold in the first five months of this year compared with the same period last year. There has been an enormous surge in complaints since the last quarter of last year. This rapid growth in the number of complaints could indicate that the quality of customer service is deteriorating. Whatever the reason, it is posing an additional burden on all concerned.

1 This is the text of the speech delivered by Joseph Yam, Chief Executive of the Hong Kong Monetary Authority, at the Hong Kong Association of Banks Half-Yearly Dinner on 24 June 2002.

And thirdly, the HKMA is finding it difficult to cope with this situation. We are having to divert staff resources from other important tasks at a time of retrenchment. Worse still, the fact that the HKMA has no explicit statutory responsibility to resolve consumer complaints has caused disappointment to some complainants.

I am pleased to see that debate on this issue has revived recently, with the further discussion of consumer protection in the banking sector by the Legislative Council Financial Affairs Panel earlier this month. I should like this evening to contribute to that debate in two ways:

First, by setting out what I understand the powers of the HKMA to be – and not to be – under the Banking Ordinance in relation to dealing with consumer complaints against banks; and

Secondly, by summarising, in the light of the recent debate, what I believe should be the next steps in improving the handling of complaints.

The Banking Ordinance is a complex statute of some 200 pages and it has been much amended since its original enactment in the 1960s. The mandate of the HKMA is, however, set out very plainly in section 7(1) of the Ordinance, which states that:

"The principal function of the Monetary Authority under this Ordinance shall be to promote the general stability and effective working of the banking system."

We pursue this mandate through licensing criteria and ongoing supervision of banks. We complement this supervisory work with a variety of initiatives under the banking reform and other programmes, the ultimate intention of which is to promote general stability and effective working of the system. For example:

First, the deposit insurance scheme, now at the detailed planning stage, will promote the general stability of the system by protecting individual depositors up to a certain limit.

Secondly, the Commercial Credit Reference Agency, which is expected to be launched as a voluntary, market-based scheme in the not-too-distant future, will promote the effective working of the system – and the larger economy – by helping banks channel lending to creditworthy small enterprises.

Thirdly, public consultation by the Privacy Commission will soon commence on broad proposals for the sharing of positive consumer credit data – a facility which, when and if it is introduced, will help in addressing an issue of concern to banking stability: the dramatic rise in consumer defaults and personal bankruptcies.

All of these measures have implications for individual customers of banks, but their rationale derives from the MA's principal function: to promote the general stability and effective working of the system.

The important thing to note about this "principal function" of the MA under the Banking Ordinance is that it relates to general, "macro", systemic issues, to the safety and soundness of banks and the system as a whole, not to the relationship between individual consumers and their banks. The HKMA's involvement in promoting and encouraging proper standards of conduct and sound and prudent business practices under section 7(2) of the Banking Ordinance is only incidental to its primary function of promoting the stability and effective working of the banking system. Nevertheless, even in the absence of an explicit legal mandate for consumer protection, the HKMA has become increasingly involved in this area, particularly in helping to develop the Code of Banking Practice and in enforcing banks' compliance with the Code.

One recent real-life example of this is a quite appalling case of mistaken identity that recently came to our attention. The debt collection agency of a certain bank was pursuing debts against an innocent and entirely unconnected third party who happened to be living in the last known address of the real defaulter. The agent did not identify itself and the bank for whom it was acting when collecting debt. It kept on pestering the innocent

third party for one month until after the Police had found out which bank it was acting for and a complaint was lodged to the HKMA against that bank. But the explanations given by the bank, both to the complainant and ourselves, about how the mistaken identity could have arisen and about what measures would be taken to prevent this sort of thing from recurring, were not satisfactory. Without going into details, these explanations raised more questions than they answered. This, in our view, gave rise to general supervisory concerns both about the bank and its business practices, and about practices relating to debt collection generally. We therefore took this matter up with the Code of Banking Practice Committee, and the industry associations have since reminded their members to improve monitoring of the performance of debt collection agencies. We have also tightened up our own monitoring of this issue, as you are aware through our letter issued at the end of last month.

More than half of the complaints we receive are about debt collection: not all are necessarily as extreme as the case I have described, but many, in our view, raise similar supervisory concerns. Taking action on the question of bad business practices in the use of debt collection agencies was, in my view, clearly within the MA's powers under section 7(2), since it could threaten the reputation not only of the bank concerned but also of the banking system as a whole. However, it would be stretching these powers too far to apply them to the "micro" region of individual consumer complaints about the cost or quality of banking services. We frequently receive complaints about fees and charges made by banks which appear unreasonable to the complainant – for example the imposition of charges on dormant or small deposit accounts. Our practice with such complaints is to refer them to the bank concerned and to ask it to reply direct to the complainant. As long as we are satisfied that the transparency standards in the Code of Banking Practice have been met, then we take the view that fees and charges are commercial decisions and we do not intervene.

In handling complaints about bank services, the HKMA's role is limited to ensuring that the process by which the complaints are handled by AIs is fair and efficient. We have a very limited role in dispute resolution. Even if we wanted to intervene formally in such cases, it is difficult to see how, legally speaking, we could do so. The sanctions available in section 52 of the Ordinance – and the triggers specified for these sanctions – make it clear that intervention by the MA against an AI must be a response to issues affecting the health of the AI as a whole, or the interests of its depositors or creditors as a whole, or the broader public interest. The Ordinance confers no powers to arbitrate disputes, to name and shame, or to require banks to pay compensation or rectify mistakes. There are no penalty kicks or yellow cards or red cards available under the Ordinance. To use the powers or sanctions available under section 52 to settle a consumer complaint would be rather like sending off the whole team for a simple case of offside.

Needless to say, the present arrangements give rise to a certain amount of frustration. The complainants naturally assume that the body that supervises banks – the HKMA – can sort out their complaints against banks and recover financial losses. Not surprisingly, not every complainant who discovers that we cannot do this is satisfied with the kind of explanation of our legal powers that I have given to you this evening. Some get angry, and persist with their complaints. A few have taken the matter to other authorities. We have diverted staff resources to the time-consuming task of dealing with the rising number of complaints. But there is a limit to what we can do without affecting our main responsibilities under our mandate.

Clearly, something needs to be done. What are the options available? What are the steps to be taken? An obvious solution is to tackle the problem at its source by reducing the grounds for complaint. This requires the banks to maintain and improve the quality of their service and to improve their complaint-handling procedures so that customer dissatisfaction is dealt with quickly and decisively. Initiatives by the banking industry in co-operation with the HKMA have been taken over the past year to promote this process. They include the major revisions to the Code of Banking Practice, setting out basic standards for personal banking services – and on issues such as debt collection – and placing an emphasis on transparency. They also include monitoring of

compliance with the Code by the HKMA and specific guidance from the HKMA on the handling and processing of complaints. In view of the recent surge in number of complaints, both the HKMA and the industry associations have written to AIs to urge that sufficient resources be devoted to handling of complaints and to remind them to step up monitoring of the performance of their debt collection agencies.

We believe that these initiatives have been of some help in promoting higher standards and consistency in the handling of complaints. We shall supplement these initiatives as appropriate. But, no matter how high the quality of service, or how smooth and efficient the handling of dissatisfied customers may become, there will always be complaints and misunderstandings. In fact, quite often the more easy it is to complain, the more the complaints – even at times when the general quality of service may be improving. Higher expectations on the part of the public, a greater complexity of services and products all contribute to a greater volume of complaints. Less positively, a more difficult economic environment contributes to friction between banks and their customers, for example in the greater incidence of default on debt on the one hand and in the greater tendency among banks, in times of tighter margins, to go after that debt. Whether in good times or bad, a certain volume of complaints is a healthy phenomenon because it encourages improvements in service where complaints are upheld, and improvements in transparency where misunderstandings occur. On a subject so important as the way in which banks handle people's money, there will always be complaints, and we need to continue to develop our machinery for dealing with them.

Let me deal quickly with the options identified by the HKMA in its survey last year which, if I read it correctly, the debate within the industry and the community is ruling out. The first option of these is the establishment of a separate banking ombudsman along the lines of the practice in some other jurisdictions. This is, in some senses, a Rolls Royce solution in that it would provide a separate agency, to process and resolve complaints, with powers to arbitrate in complaints and award compensation. It would, however, be a costly solution, and it would take a considerable time to implement. Under such a system, the process of handling complaints would probably also be quite resource-intensive, and it is by no means clear that it would be able to address the full range of complaints being made. I think the consensus at present, as reflected in the recent discussion at the LegCo Financial Affairs Panel, is that neither the current volume and nature of complaints nor the deficiencies in existing arrangements would justify the creation of such elaborate machinery.

The second option would be to give the HKMA a clear mandate to arbitrate and resolve consumer complaints and the powers to impose sanctions. This option could go some way towards addressing the current gap between the expectation of bank customers and what the HKMA can do for them under its existing powers. However, I think there is a consensus that this is not the right time for the HKMA to be given such a role. It would require a considerable increase in resources and some form of cost recovery from the banking industry, and it would also require addressing concerns about conflict of interest between different branches of the organisation – a problem that is not insoluble, but which would nevertheless require some careful thought. This, at least for the time being, does not seem to be the preferred option.

The weight of opinion seems, then, to fall on the third option, which is to rely mainly on the industry itself to ensure that complaints are properly handled. There are three things which banks can do in helping to promote self-regulation:

First, AIs should strictly follow the Code of Banking Practice, which is issued by their own industry associations. They should comply not only in form but in substance as well. For example, in relation to debt collection, it is not enough that they have incorporated the relevant provisions of the Code into the service agreement with their debt collection agents. They should also pro-actively check that their agents are actually following these provisions when collecting debts.

Secondly, AIs should ensure that all complaints are dealt with fairly and thoroughly. Again it is

not enough that there are efficient complaint handling policies and procedures in place. It is more important that such policies and procedures are conscientiously implemented by their staff. Where a complaint is justified, AIs should be prepared to offer the complainant restitution or compensation.

Thirdly, AIs should ensure adequate levels of transparency in the provision of banking products and services. This is very important given the proliferation of more innovative and sophisticated products in the retail banking market. AIs must let their customers know the true cost of credit and ensure that all advertising and promotional materials do not contain misleading information.

Self-regulation would not be a success without the involvement of the industry associations. Over the past six months, the industry associations have taken on a much more active role in developing the Code of Banking Practice. They have set up the Code of Banking Practice Committee, which has so far been effective in enhancing the role of the industry in self-regulation of market conduct. The Committee has responded effectively and promptly to public concerns about banks' business practices by providing appropriate guidance on interpretation of the Code or even amending relevant provisions of the Code.

The question of the industry associations' involvement in resolving customer disputes, whether or not these are related to the Code, is more controversial. Although the HKAB Ordinance does provide the Association with certain powers in relation to conduct regulation, the principal concern is whether such an industry-run scheme would have the necessary credibility, since banks would effectively be policing themselves.

The rapid growth in number of complaints is a cause of concern but not a cause for alarm. The current framework of self-regulation by the industry has worked reasonably well in the past and there is no reason why it cannot continue to do so with a bit of help from banks themselves. We should monitor the situation carefully before rushing into other costly options. Meanwhile, the banks must help by tackling the problem at source: through being careful to avoid giving grounds for complaint and through dealing with any complaints that do arise fairly and promptly.

All of this does not rule out a role for the HKMA. How best can we participate? I believe we should continue to play a support and resource role, in the further development of tools, such as the Code of Banking Practice and guidance on procedures, for the handling of complaints, and a monitoring role in ensuring that the system of self-regulation developed by HKAB and its members is working effectively. We can also help from an educational point of view by clarifying the options that members of the public have should they wish to complain about banks and by disseminating information on this through leaflets, our website, and other tools. A part of this clarification must set out the limits on what the HKMA can and will do in the taking on of banking consumer complaints: we are currently working on such a clarification.

Self-regulation in the market, with support and guidance from the regulator, is, in my view, a sensible and appropriate way forward for a market economy such as Hong Kong. I am therefore very pleased that the general consensus seems to point in this direction. Whether this approach succeeds depends very much on the effort and energy put into it by the banking sector. It will also be influenced by trends in complaints over the coming months – rising, falling or otherwise – in the light of the many factors that give rise to complaints. The HKMA, in partnership with HKAB, will be monitoring developments, and I note that the Legislative Council Panel will also be revisiting this issue in six months time.

Let me conclude with one point, which I hope has become clear through the discussion of this issue. The outcome of this discussion may come as a disappointment to those who say that the HKMA has an evil plan for taking over the world by grabbing powers and responsibilities whenever it can. The fact is that, although we are not technically a "statutory" body, what we can and cannot do in pursuit of our policies is strictly controlled by legislation, which is a matter ultimately for the Legislative Council to decide.

I have, I hope, shown that this legislation, as it now stands, does not permit us to do many of the things that many complainants would expect or wish us to do. In setting out the various alternative approaches to complaint handling as objectively as we can, we have, I hope, made it clear that the HKMA does not seek, or even welcome, an expansion of its powers to satisfy these expectations. On the contrary, at a time of continuing challenge and shrinking resources, we think it sensible to concentrate our energies on our core responsibilities. We therefore welcome the present consensus on this issue and, together with HKAB and other parties, shall do our best to ensure that it works.