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PART I - INTRODUCTION

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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 their personal 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 personal customers in Hong Kong.

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 2 January 2009. 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. Objectives

2.1. The Code is intended -

(a) to promote good banking practices by setting out the minimum standards which institutions should follow in their dealings with personal 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 fair and cordial relationship between institutions and their customers; and

(d) through the above, to foster customer confidence in the banking system.

3. Principles

3.1. 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 consumer 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 Banks and Customers

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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. The terms and conditions should provide a fair and balanced description of the relationship between the customer and the institution.

5.3. 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. Plain language should be used to the extent that this is consistent with the need for legal certainty. Legal and technical language should only be used where necessary.

5.4. 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.

5.5. 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.

5.6. 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.

5.7. Institutions should advise customers to read and understand the terms and conditions when applying for banking services.

5.8. 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 sections 6.3 and 6.4 below). For all other variations, institutions should give customers reasonable notice before such variation takes effect. The notice should show clearly the variation and the ways in which the customer may indicate refusal and the consequence.

5.9. 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.

5.10. Institutions should issue to customers a single document to provide a consolidation of the revised terms and conditions if there are sufficient changes to warrant it.

5.11. 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.

5.12. In addition to the detailed terms and conditions, institutions should make readily available to customers general descriptive information on the key features of the various banking services as indicated in the following chapters of this Code.

5.13. For the avoidance of doubt, sections 5.1 and 5.7 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. A schedule of the institution's standard fees and charges should be displayed in its principal place of business and branches.

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 or 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, unless such changes are not within their control.

6.4. Where institutions give a notice pursuant to sections 5.8 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 and Holding 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 and holding 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. Institutions should be as specific as possible about 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) computer firms to which the processing of personal information is to be, or may be, outsourced;

(c) credit reference agencies;

(d) related companies within the same group to whom customers' names and addresses may be disclosed for marketing purposes; 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 -

(a) provide bankers' references in respect of a customer; or

(b) disclose customers' names and addresses to companies which are not related companies within the same group for marketing purposes.

8.5. When a customer objects to the disclosure of the information referred to in section 8.3(d) above or refuses to give the consent referred to in section 8.4(b) above, the institution concerned should not refuse to provide that customer with basic banking services.

8.6. 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.

8.7. 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 8.6 above.

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. 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.

10.2. Institutions should not discriminate against customers with a disability and should adopt a helpful approach by making available to them banking services on the same terms and conditions as for other customers. Institutions are also 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 advertising and promotional material for a banking service that includes a reference to an interest rate, institutions should also indicate the annualised percentage rate, where relevant, and other relevant fees and charges, and that full details of the relevant terms and conditions are available on request.

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 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 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.

12. Annualised Percentage Rates (APRs)

12.1. Institutions should where relevant quote APRs of banking products to facilitate comparison between different charging structures. Where interest rates for the product are commonly quoted in terms of annualised floating rates (e.g. deposits, overdrafts and mortgage loans), institutions are not obliged to quote the corresponding APRs, but they should show all fees and charges 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 and calculated in accordance with the method set out in the relevant guidelines issued by the industry associations 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 thus calculated should not exceed the legal limit as stated in the Money Lenders Ordinance.

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. Opening of Accounts

15.1. 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.

15.2. Institutions should follow the customer identification procedures set out in the HKMA's current guidelines on money laundering. These procedures include obtaining information on the customer's occupation or business activities and permanent address. Positive identification should be obtained from documents issued by official or other reputable sources, for example, passports or identity cards.

15.3. Institutions should provide to customers or prospective customers upon request general descriptive information about the identification requirements.

16. Closing of Accounts

16.1. 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.

16.2. Institutions should not close a customer's account without first giving reasonable notice, except under exceptional circumstances, for example, where the account is being used for criminal activities.

17. Operation of Accounts

17.1. 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 18 below); and

(f) the closing of accounts (see section 16 above).

17.2. 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 authorised signatory or signatories will be binding on all account holders;

(c) the manner in which such authorised 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 18 below).

17.3. 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.

17.4. 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.

18. Rights of Set-off

18.1. The descriptive information made available to customers (see section 17 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.

18.2. 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.

18.3. Institutions should set out in their terms and conditions the circumstances under which they would exercise their rights of set-off.

18.4. Institutions should inform the customer promptly after exercising any rights of set-off.

19. Deposit Accounts

19.1. 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.

19.2. 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.

19.3. 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.

19.4. 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.

19.5. 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.

19.6. 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.

19.7. Institutions should make a risk disclosure statement in advertising and promotional materials relating to deposit accounts which are linked to risky products, such as option-linked deposits and index-linked deposits. Such statement should include -

(a) an explicit warning of the risks of dealing in the investment products linked to the deposit accounts;

(b) information on whether the principal, interest or both may be subject to possible loss arising from the linked investment products; and

(c) a fair comparison of the possible returns on the investment with conventional time deposits, or (where practicable) other similar low-risk instruments, in each case of the same currency and comparable maturity.

20. Loans and Overdrafts

20.1. 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.

20.2. 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 -

(a) the rate of interest for the loan or overdraft, and whether it may be varied over the period of the loan;

(b) 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;

(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 penalties, and the charges or termination fees for early repayment; and

(h) the institution's right, in the event of default of the borrower, to set off any credit balance in other accounts held by the borrower (or in a joint account of the borrower) against the amount due to the institution.

20.3. For personal loans with a specified maturity date, institutions should quote the APRs for different tenors which are commonly selected by customers. Where there is more than one applicable interest rate during the loan period, institutions should follow the method set out in the relevant guidelines issued by the industry associations and quote the effective APRs for the relevant tenors.

20.4. For personal 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.

20.5. The number of days used as the basis of interest calculation for loans and deposits should be consistent.

20.6. 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.

20.7. 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.

20.8. Institutions should advise customers to inform them as soon as possible of any difficulty in repaying or servicing the loan over the credit period.

21. Residential Mortgage Lending

21.1. Institutions should provide customers and prospective customers with information similar to that in section 20.2 above upon application for a mortgage loan on a residential property / car park or, where relevant, in a subsequent offer. 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.

21.2. 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 23 below.

21.3. Institutions should provide customers with revised particulars of instalments payable by the customer after every adjustment of the interest rate.

21.4. Customers may, from institutions' approved lists, appoint solicitors to represent both themselves and the institutions to execute mortgages on properties (unless it is the institution's policy to employ separate legal representation) and employ

insurers which they think fit to insure the properties. 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.

21.5. Institutions should inform customers and prospective customers whether they may choose to employ solicitors or insurers other than those on the approved lists of institutions, the procedures involved, any fees charged by the institutions, and any extra costs involved.

21.6. Institutions should also inform customers or prospective customers that they have the right to employ separate legal representation for themselves, and the cost implications of doing so.

21.7. The amount and the nature of risks to be insured 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 loan value or the cost of reinstating the property in the event of fire or other serious damage, and should inform them of any extra costs or fees involved (for example, annual valuation fees for the latter option).

21.8. 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.

21.9. 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.

22. 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 23 below.

23. Guarantees and Third Party Securities

23.1. Subject to the consent of the borrower as required in section 23.9 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.

23.2. Institutions should in writing advise the surety -

(a) that by giving the guarantee or third party security, the surety might become liable instead of or as well as that other person;

(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.

23.3. A clear and prominent notice regarding the provisions in section 23.2 above should be included in or attached to the guarantees and other third party security documentation.

23.4. 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 23.2(b) above).

23.5. For the purpose of section 23.4 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.

23.6. Where a guarantee or third party security is unlimited in amount (as described in section 23.2(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.

23.7. 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 customary reminder.

23.8. Subject to the consent of the borrower as required in section 23.9 below, institutions should provide, upon request by the surety, a copy of the latest statement of account provided to the borrower, if any.

23.9. 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 23.1, 23.7 and 23.8 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.

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24. 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).

25. Issue of Cards

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

25.2. Notwithstanding section 11.5 above, 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; or

(b) they are to replace or renew cards that have already been issued (but subject to section 25.8 below).

25.3. 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.

25.4. 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 28 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 31 below);

(c) the cardholder's liability for the unauthorized use of a card (see section 32 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 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 27 below).

25.5. 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 on their respective liabilities for debts incurred on the cards issued;

(b) inform both the primary and subsidiary cardholders of the means by which a subsidiary card may be cancelled and suspended, including the need to return the subsidiary card as soon as possible. Where the subsidiary 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 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 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.

25.6. 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.

25.7. Card issuers should inform cardholders if a card issued by them has more than one function. Card issuers should comply with requests from cardholders not to issue PINs where cardholders do not wish to use functions operated by a PIN.

25.8. Card issuers should not automatically renew a card without giving the cardholder at least 30 days' notice commencing from the date of renewal to cancel the card without having to pay the renewal fee.

26. Terms and Conditions, Fees and Charges and Interest Rates

26.1 Card issuers should comply with the relevant provisions of Chapter 1. In particular,

(a) a copy of the terms and conditions should be provided at the request of customers (or prospective customers);

(b) 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 described or highlighted in plain language (both in English and Chinese) in the application forms for card services. The description should be printed in clear and legible type and in a font size that facilitates easy reading; and

(c) card issuers should quote APRs on card products (one for retail purchase and one for cash advance), 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.

27. Rights of Set-off

27.1. The descriptive information made available to cardholders (see section 25 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.

27.2. 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 25.6 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.

27.3. Card issuers should inform cardholders promptly after exercising any rights of set-off.

28. Security of Cards/PINs

28.1. 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.

28.2. 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.

28.3. 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).

28.4. Card issuers should ensure that transactions made through electronic terminals can be traced and checked, so that any error can be identified and corrected.

28.5. 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.

29. Transaction Records

At Electronic Terminals

29.1. 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.

29.2. 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

29.3. Card issuers should provide cardholders with statements of account 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 customer.

29.4. 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) the address or telephone number to be used for enquiries or reporting errors in the statement.

30. Unauthorized Transactions

30.1. Card issuers should advise cardholders to examine their statements of credit card account 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.

30.2. 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.

30.3. 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 and 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.

30.4. 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.

31. Lost Cards/PINs

31.1. 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.

31.2. 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.

31.3. 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.

31.4. 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.

31.5. 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.

32. Liability for Loss

32.1. 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 32.4 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.

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

32.3. 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 credit 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 credit card account and does not cover cash advances. Card issuers should give clear and prominent notice of this limit to cardholders.

32.4. 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 28.2 and 31.1 above if such failure has caused the losses.

32.5. 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.

33. 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.

34. 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.

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35. Cheques

35.1. 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.

35.2. Institutions should also warn customers to exercise caution in the safekeeping of cheque books. Customers 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, cheques should not be pre-signed in blank.

36. Cross-border Payments

36.1. 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.

36.2. Institutions should promptly notify the customer if an outgoing cross-border payment could not be effected.

36.3. 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).

36.4. 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).

36.5. In addition to section 36.4 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.

36.6. 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.

36.7. 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.

37. Other Payment Services

37.1. 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.

37.2. Where customers may gain access to their accounts through telephone banking services, institutions should tape-record the verbal 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.

37.3. 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.

38. Debt Collection by Third Party Agencies

38.1. It is essential that debt collection agencies 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. Institutions should enter into a formal, contractual relationship with their debt collection agencies which, among other things, enforces these requirements. The contract should make it clear that the relationship between the institution and the debt collection agency is one of principal and agent.

38.2. Related to the above, institutions should specify, either in the contract or by means of written instructions, that their debt collection agencies must not resort to intimidation or violence, either verbal or physical, against any person in their debt recovery actions. In addition, institutions should require their debt collection agencies not to 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.

38.3. Institutions and their 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 agencies, to this effect.

38.4. 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.

38.5. Institutions intending to use debt collection agencies should specify in the terms and conditions of credit or credit 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.

38.6. Institutions should remain accountable to customers for any complaints arising out of debt collection by third party

agencies and should not disclaim responsibility for misconduct on the part of the debt collection agencies.

38.7. 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.

38.8. Institutions should not engage more than one debt collection agency to pursue the same debt in one jurisdiction at the same time.

38.9. 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 to their debt collection agencies which should be presented to the debtor upon request for identification purposes.

38.10. Institutions should establish effective communication with their debt collection agencies and systems for prompt updating of the agencies on the amount of repayment made by customers so that the agencies will stop immediately all recovery actions once the debts are settled in full by the customers.

38.11. 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.

38.12. 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.

39. Management of Relationship with Debt Collection Agencies

39.1. Institutions should have proper systems and procedures in place for the selection of 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.

39.2. Institutions should encourage their debt collection agencies to aspire to the highest professional standards and, where appropriate, to invest in suitable systems and technology.

39.3. 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 38.2 and 38.3 above.

39.4. 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.

39.5. 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 agency staff 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.

39.6. 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.

39.7. 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.

39.8. 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.

39.9. Institutions should not delegate authority to debt collection agencies, to institute legal proceedings against customers without the institutions' formal approval.

39.10. Institutions should specify in their contracts with debt collection agencies that the agencies should not sub-contract the collection of debts to any other third parties.

39.11. 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.

39.12. 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.

40. Disclosure for e-banking Services

40.1. 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 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.

40.2. 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.

41. Security in relation to e-banking

41.1. 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.

41.2. 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.

41.3. 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.

41.4. 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).

41.5. Institutions should ensure that transactions of their e-banking services can be traced and checked as long as they are received by their systems.

41.6. 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.

42. Liability for Loss

42.1. Unless a customer acts fraudulently or with gross negligence such as failing to properly safeguard 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 32 above.

42.2. 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). Customers should be warned that this may apply if they fail to follow the safeguards set out in sections 41.1, 41.3 above and 43.1 below if such failure has caused the losses.

43. Reporting of Actual or Suspected Security Incidents

43.1. 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.

43.2. Customers should be advised that they may be held liable for the losses if they have failed to comply with section 43.1 above.

43.3. 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.

43.4. 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.

43.5. 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.

Chapter 7 – Stored Value Cards (or Devices)

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44. 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).

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

45.1. 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).

46. Terms and Conditions and Fees and Charges

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

46.2. 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).

46.3. 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 of 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.

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

46.5. 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.

47. Operation of SVCs

47.1. 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.

47.2. 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.

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

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

47.5. 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.

47.6. 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.

47.7. 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.

Useful Definitions

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

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 for money transmission by means of cheque and other debit instruments. This would normally be a current account.

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.

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

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 Customers -

A private individual who

(i) 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

(ii) 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.

Customers and personal customers are used interchangeably in this Code.

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.