

**Information Note for  
the LegCo Panel on Financial Affairs**

**Comparative Study on Banking Consumer Protection and Competition  
Arrangements in the UK, Australia and Hong Kong: An Introductory Note**

**Introduction**

This note summarises the findings of a comparative study recently conducted by the Hong Kong Monetary Authority (HKMA) on how the banking consumer protection and competition arrangements in Hong Kong compare with those in two other jurisdictions, the UK and Australia. It also highlights a number of issues that, in the view of the HKMA, need to be addressed in considering what improvements can be made to Hong Kong's arrangements.

**The Study**

2. The purpose behind the Study is to bring together factual information on what is being done elsewhere on banking consumer protection and competition so as to facilitate consideration of whether the current arrangements in Hong Kong remain appropriate. The UK and Australia were chosen because these two jurisdictions provide clear examples of two different approaches and institutional frameworks. The Study also identifies certain areas in which the arrangements in Hong Kong do not go as far as, or are less formalised than, those in the other jurisdictions.

**Comparison between the UK, Australia and Hong Kong: highlights**

3. A key difference between Hong Kong and the other two comparison jurisdictions is that the regulators in both the UK and Australia have been given an explicit mandate in relation to the protection of consumers of financial and banking

services. In the case of Hong Kong, the HKMA only has a general duty to "provide a measure of protection to depositors" under the Banking Ordinance. There is no explicit mandate with respect to consumer protection.

4. Among the major differences between the Hong Kong and overseas regime, two particular areas are highlighted: first, the setting, monitoring, and enforcement of standards of business practice; and, secondly, the investigation, resolution, and arbitration of customer complaints.

5. With regard to standards of business practice, all three jurisdictions have a Code of Banking Practice, and in all three jurisdictions this Code is non-statutory. However, there are differences in who enforces the Code and how it is enforced, and what sanctions are available against institutions that breach it. In both the UK and Australia, there is formal monitoring of compliance by a specialist agency. In Hong Kong, although monitoring falls to the HKMA, this is not its statutory responsibility and it does not have statutory powers specifically related to the Code.

6. For the resolution of customer complaints, both the UK and Australia have a formalised Ombudsman scheme, initially set up on a self-regulatory basis, which has powers to arbitrate in disputes. Hong Kong has no such scheme, although the HKMA plays a role in relation to customer complaints in terms of trying to ensure that they are dealt with properly by the banks involved. The HKMA, however, cannot arbitrate on complaints, nor can it make orders for compensation.

7. These two examples highlight how the consumer protection arrangements in Hong Kong do not go as far as, or are less formalised than, those in the other jurisdictions. In part this may be due to a difference in philosophy - i.e. Hong Kong's more free-market, pro-competition approach. But as the Hong Kong market is becoming more sophisticated and more competitive, and as consumer issues are coming more to the fore, it is timely to consider whether the current arrangements in Hong Kong remain appropriate.

8. If it is considered that Hong Kong should move further down the path followed by the other jurisdictions this will raise a number of issues. The first question is which are the areas in which Hong Kong's arrangements should be enhanced, and how should this be achieved, including the extent to which legislation would be required. The second is to decide who should be responsible for these matters. There are three broad options for this. The first would be some form of self-regulation by the banking industry. The second would be some form of consumer protection agency. The third would be to assign this responsibility to the HKMA. All of this would have to be the subject of detailed consideration by the Government, the Legislative Council, and other interested parties.

#### **HKMA involvement in consumer protection?**

9. At present the HKMA does not have an explicit mandate in the area of consumer protection, but over time it has increasingly participated in this area. For example, the HKMA is heavily involved in the Code of Banking Practice and also in dealing with customer complaints. It does this willingly and considers it as an important part of its role, and would not be averse to becoming more involved in this area if this were asked of it. While there may be potential conflicts associated with taking on both prudential regulation and consumer protection roles, these can be managed by having clear Chinese walls between the two functions. Moreover, there are also synergies between the two roles, since both require a good knowledge of, and close contacts with, the banking industry. There is also the point that it may also be more efficient and cost-effective for the HKMA to take on this role than to establish a separate entity.

10. The HKMA remains open-minded on this. It should, however, be made clear that greater involvement of the HKMA in these areas would require a clear mandate, statutory powers, and additional resources. While the existing powers under the Banking Ordinance are not ideally suited to micro issues of consumer protection,

the HKMA has been able to find ways to enhance its involvement in areas such as the Code of Banking Practice and customer complaints effective. Nevertheless, powers of the HKMA would have to be reconsidered if its mandate were to be widened.

11. It is important to point out from the outset that a greater emphasis on consumer protection issues would not mean that there would be intervention in banks' commercial decisions in such areas as the setting of fees and charges. It is clear from the Study that, while the scope of consumer protection is wider in other jurisdictions, there are certain areas, even in these jurisdictions, such as the pricing of services and lending decisions, which do not come within the compass of consumer protection.

### **The next step**

12. With regard to the future work programme, HKMA's priority is to work together with the Hong Kong Association of Banks to finalise the current review of the Code of Banking Practice. Once this has been completed, the HKMA intends to move on to consider the following specific issues:

- (a) Should the HKMA be given an explicit statutory responsibility for consumer protection? If so, how should this responsibility be expressed and how should it be discharged?
- (b) How, and by whom, should the Code of Banking Practice be monitored and enforced? Is there a case for giving the Code some form of statutory backing?
- (c) What sanctions should be made available against institutions that breach the Code?
- (d) Should the HKMA set specific standards for banks' internal complaint handling procedures?

- (e) Is there a need for an external mechanism, such as an Ombudsman scheme, for resolving disputes between banks and their customers? If so, what arrangements for dispute resolution should be put in place?

13. This is certainly not an exhaustive agenda for addressing consumer issues. Nor does it address the question of how competition within the banking industry should be promoted and by whom. However, to find appropriate answers to these questions would go a long way to putting in place an effective framework for consumer protection in the banking industry. The HKMA will be taking this work forward in consultation with other bodies such as the industry Associations and the Consumer Council. It will report back to the Legislative Council Panel on Financial Affairs on the results of this work as soon as possible.

Hong Kong Monetary Authority

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