Disclosure of information relating to the affairs of individual customers under section 121(3) of the Banking Ordinance

A guideline issued by the Monetary Authority under section 7(3) of the Banking Ordinance

Introduction

1. The Banking (Amendment) Ordinance 1999 amends, among other things, section 121(3) of the Banking Ordinance ("the Ordinance") to allow the Monetary Authority ("MA") to disclose information relating to the affairs of any individual customer of an authorized institution ("institution") or local representative office to an overseas supervisory authority.

2. The amendment to section 121(3) is necessary in order to bring Hong Kong's banking supervisory regime in line with the Basel Committee's Core Principles for Effective Banking Supervision which are accepted as international standards. Principle 25 provides that host banking supervisors of the local operations of foreign banks must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision. In the view of the Basel Committee, this includes the sharing of information about individual customers.

3. This guideline sets out the manner in which the MA will exercise his discretion to disclose information about individual customers and the criteria for such disclosure.

MA's considerations and criteria for disclosure

4. The guiding principle to be followed by the MA is that he will not routinely disclose information relating to individual customers to an overseas supervisory authority. This means, among other things, that the MA will continue to delete the names of individual customers in HKMA examination reports sent to an overseas supervisory authority. Disclosure of information about individual customers will be made only on a case-by-case and "need to know" basis, following either a specific request from the overseas authority concerned or on occasions at the initiative of the MA. The latter might occur, for example, where the MA wished to share information about a problem loan booked in Hong Kong with the relevant institution's home supervisor.

5. Normally, there should be no difficulty with the MA providing information upon a specific request of an overseas supervisor relating to the credit exposure or other financial exposure of the institution concerned, provided that the relevant criteria are satisfied. Such information is of the type which would be of direct relevance to the home supervisor in the conduct of its consolidated supervision of the institution concerned.

6. As regards the liability side of the balance sheet, the MA will take particular care regarding the disclosure of information about individual depositors. This is in line with the recommendations of the Basel Committee[*] which acknowledges that home supervisors do not normally need to know the identity of individual depositors. However, a home supervisor may sometimes wish to know the amount of deposits held by a depositor in Hong Kong in order to verify whether the depositor in question is among the large depositors of an institution. This would enable the home supervisor to monitor deposit concentrations or the funding risk of the deposit being withdrawn. In such cases, where there is a clear and specific supervisory need for the information in question, the MA will consider whether to respond to a request for disclosure from an overseas supervisory authority. In general, however, it is envisaged that the test for whether disclosure about individual depositors should be made will be set at a higher level than in the case of information on credit exposures.

7. Before making any disclosure, whether of credit or deposit information, the MA will wish to satisfy himself that the criteria laid down in section 121(1)(b) of the Ordinance are satisfied, including that the overseas supervisory authority is subject to adequate secrecy provisions in the overseas jurisdiction concerned. In addition, where the proposed disclosure relates to a customer who is an individual, the MA will wish to satisfy himself that the exemption given to financial regulators under section 58 of the Personal Data (Privacy) Ordinance applies to the particular circumstances of the case.

8. As required by section 121(3)(b) of the Ordinance, the disclosure of any information about an individual customer to an overseas supervisory authority shall be subject to the condition that the information shall not be disclosed to any other person without the consent of the MA. In addition, the MA will want to lay down the following criteria which are in line with the recommendations of the Basel Committee:

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[*] As set out in the report on The Supervision of Cross-Border Banking produced by the Basel Committee and the Offshore Group of Banking Supervisors in 1996.

(a) the purpose for which the information is sought must be specific and supervisory in nature;

(b) the information will be restricted solely to officials engaged in prudential supervision;

(c) all possible steps will be taken to preserve the confidentiality of information received by the overseas supervisory authority;

(d) there is a two-way flow of information between the MA and the supervisory authority concerned (although it will not be possible to insist on perfect reciprocity); and

(e) the overseas supervisory authority will consult with the MA before taking consequential action based on the information disclosed.