HONG KONG MONETARY AUTHORITY
香港金融管理局

Circulars

15 Oct 2004

Exemption of Liability Clauses in Contracts for Banking Services

Our Ref: B1/1C

15 October 2004

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

Exemption of Liability Clauses in Contracts for Banking Services

When providing services to customers, such as safe deposit boxes, authorised institutions (AIs) generally include an exemption of liability clause in their contracts with customers. Some of these exemption clauses purport to exclude or restrict to a nominal amount an AI's liability even in the case of loss or damage caused by the negligence of the AI or its staff.

Under the Control of Exemption Clauses Ordinance (Cap 71), which governs contracts between consumers and business enterprises, a party to a contract cannot by reference to any contract term or to a notice given to the other party exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness (see section 7(2) of that Ordinance). Section 5.5 of the Code of Banking Practice also states that, in drawing up their terms and conditions for banking services, AIs should have due regard to applicable laws in Hong Kong, especially consumer protection legislation, which should include the Control of Exemption Clauses Ordinance. In addition, there is a general requirement under section 5.2 of the Code that terms and conditions for banking services should provide a fair and balanced description of the relationship between the customer and the AI.

In view of the above, we request all AIs to undertake a comprehensive review of their terms and conditions for banking services to see if they are consistent with the Code of Banking Practice and to consider whether any amendments to such terms and conditions are necessary. The review should be conducted by the Compliance Department of the AI (or other equivalent unit) in collaboration with the AI's legal advisors. The report of the review, including any action plan to revise the terms and conditions, should be submitted to the HKMA before 15 January 2005. For those AIs providing safe deposit box service, the part of the report covering the terms and conditions for safe deposit box service should be submitted to the HKMA before 15 November 2004. The report should be addressed to your AI's usual contact with the HKMA.

If you have any questions on the above, please contact Ms Carman Chiu at 2878 1474 or Miss Gillian Hui at 2878 1275.

Yours faithfully,

Arthur Yuen
Executive Director (Banking Development)

c.c. Secretary for Financial Services and the Treasury (Attn: Mrs Millie Ng)
Code of Banking Practice Committee (Attn: Secretary)
Consumer Council (Attn: The Chief Executive)

Last revision date : 01 August 2011