HONG KONG MONETARY AUTHORITY
香港金融管理局

Our Ref: B1/1C

19 October 2018

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

**Code of Banking Practice**

I am writing to remind all authorized institutions ("AIs") that they are required to fully comply with all the provisions of the Code of Banking Practice ("the Code") which sets out the minimum standards that AIs should follow in their dealings with customers in order to ensure customers are being treated fairly.

It is one of the key statutory functions of the Monetary Authority to promote and encourage proper standards of conduct and sound and prudent business practices among AIs. One of the means to achieve this objective is through ensuring AIs' compliance with the practices embodied in the Code. As explained in paragraph 100 of the Guideline on Minimum Criteria for Authorization (G.N.1505) (https://www.gld.gov.hk/egazette/pdf/20182210/egn201822101505.pdf), if an AI fails to comply with recognised ethical standards of conduct, including those embodied in the Code, the Monetary Authority would consider taking appropriate action and would have regard to the seriousness of the breach, whether the breach is deliberate or an unintentional or unusual occurrence, and whether it could be detrimental to the interests of depositors or potential depositors, etc. in considering what actions to take in a particular case.

As you are aware, since 11 December 2015, the Hong Kong Association of Banks ("HKAB") and the DTC Association ("DTCA") have temporarily suspended 17 provisions of the Code concerning mostly fees and charges (the "17 Provisions", please refer to the **Annex** for details). The suspension was mainly due to the banking industry's concerns that the 17 Provisions may have potential legal implications under the Competition Ordinance.

As a banking regulator, the Monetary Authority expects all AIs to comply with all applicable legal requirements, including the Competition Ordinance. At the same time, it is considered that all the provisions of the Code, including the 17 Provisions, are beneficial to consumers of banking products and services, and are very important for consumer protection. In view of the temporary suspension of the 17 Provisions of the Code, the Monetary Authority has issued a letter on 9 December 2015 to the banking industry requiring all AIs to continue to fully comply with all the provisions of the Code, including the 17 Provisions.

As mentioned in the HKAB's circular dated 19 October 2018, the 17 Provisions are re-activated as part of the Code as of 19 October 2018 and should be treated as supervisory requirements of the Monetary Authority like other provisions in the Code. By today's circular, which has been agreed with the Competition Commission, I hereby clarify and reiterate that as part of the Monetary Authority's requirements under the Banking Ordinance concerning proper standards of conduct and sound and prudent business practices (see paragraph 100 of the Guideline on Minimum Criteria for Authorization), all AIs are required to fully comply with all the provisions of the Code, including the 17 Provisions. Hence, compliance with the Code (including the 17 Provisions) actually stems from the Monetary Authority's requirements.

The Monetary Authority will continue to monitor AIs' compliance with the Code in the discharge of his supervisory function and will follow up with any non-compliance cases with individual AIs, as appropriate.

Should you have any questions regarding this letter, please feel free to contact Mr. Ken Lee on 2878-1357 or Ms. Teresa Chu on 2878-1563.

Yours faithfully,

Arthur Yuen
Deputy Chief Executive

Encl.

**Annex**

**Provisions in the Code of Banking Practice related to fees and charges**
**(categorised by their underlying consumer protection intentions)**

**(A) Ensuring that customers will not be charged if no service has been provided**

(1) Section 5.10 – "A notice of any variation of the terms and conditions should show clearly the variation with an explanation in plain language, where appropriate and practicable, and the ways in which the customer may indicate refusal and the consequence. In case the customer decides to terminate the banking service, the [AI] should not charge any fees for the termination under the following conditions: (a) the variation of the terms and conditions is considered key and relevant to the specific banking service; (b) the variation in (a) may adversely affect the customer; and (c) the customer indicates the decision to terminate the banking service within the notice period before the variation in (a) takes effect."

(2) Section 22.11 – "[AIs] should inform customers or prospective customers upon mortgage applications and renewals of the fire insurance policy on the property that they may choose to take out a fire insurance policy (from an insurer on the approved lists of the [AIs] or not), or to adopt the master fire insurance policy of the property (where this exists and is acceptable to the [AIs]). [AIs] should not charge any fee if a customer chooses the master fire insurance policy option. [AIs] may however require customers to take out fire insurance in addition to such master fire insurance policy under reasonable circumstances, and in doing so, [AIs] should provide the reason to the customers."

(3) Section 26.9 – "Except in the circumstances where a card is issued to replace an existing card upon a cardholder's request because the existing card has been damaged, lost or stolen, or due to a suspected security incident, card issuers should not replace or renew a card without allowing the cardholder at least 30 days from the date of replacement or renewal to cancel the card without having to pay any fee."

(4) Section 26.12 – "Card issuers should not levy any annual fees on credit cards (including any principal or subsidiary card) which are not activated by cardholders. In the case of renewal or replacement cards which are not activated, if the accounts have no outstanding balances and no cardholder-initiated activities during the first 18 months from the date of issuance of the cards, card issuers should not levy any annual fees on the credit card accounts."

(5) Section 28.2 – "Card issuers should not impose an account inactivity fee on a cardholder."

(6) Section 28.3 – "Card issuers should not impose a closed account fee on a cardholder, provided that a card issuer may recover the cost of a welcome gift or other benefit already received by the cardholder if the conditions for receiving the gift or benefit as stated in the terms agreed with the cardholder have not been fulfilled by the cardholder."

(7) Section 52.1 – "[stored value card] issuers should not automatically renew a [stored value card] without giving customers at least 30 days' notice commencing from the date of renewal to cancel the [stored value card] without having to pay the renewal fee."

**(B) Ensuring that customers will not be charged unreasonably or charged multiple fees for a single reason in their use of credit cards**

(8) Section 26.15(e) – "When card issuers provide over-the-limit facilities to cardholders, card issuers should not impose more than one over-the-limit fee or charge per billing cycle on the cardholders who have not opted out of the over-the-limit facilities".

(9) Section 26.15(f) – "When card issuers provide over-the-limit facilities to cardholders, card issuers should not impose an over-the-limit fee or charge for a billing cycle if a cardholder exceeds a credit limit solely because of fees or interest charged by the card issuers to the cardholder's account."

(10) Section 28.4 – "If card issuers impose a fee for violating the terms or other requirements of an account, the fee should be set at a reasonable amount. Late payment fee should be an amount determined in accordance with the above principle or the amount of minimum payment, whichever is the lower. In addition, when charging fees on minor breaches involving small amounts, under normal circumstances card issuers should exercise flexibility in waiving or reducing the fees. Card issuers should also be prepared to respond to enquiries from cardholders regarding the type of violation and the basis for charging the respective fee."

(11) Section 28.5 – "Card issuers should not impose more than one fee in case a late payment is triggered by a returned payment. They can either impose a late payment fee or a returned payment fee."

(12) Section 34.3 – "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 or 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."

(13) Section 36.3 – "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 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 card account and does not cover cash advances. Card issuers should give clear and prominent notice of this limit to cardholders."

**(C) Protecting customers from building up debt that they are unable to repay**

(14) Section 26.1(c) – "Card issuers should act responsibly in the issue and marketing of credit cards and the setting of credit card limits, in particular to persons (such as full time students) who may not have independent financial means. Card issuers should in all cases not grant credit limit exceeding HK$10,000 to students in an [AI] of higher education, unless the student has submitted a written application and has given financial information indicating that the student has an independent ability to repay the proposed extension of credit in connection with the account. This requirement is only applicable to credit cards issued on or after 1 October 2011."

(15) Section 30.1 – "Card issuers should set the minimum periodic payment for a credit card account at an amount no less than all interest and fees and charges (including annual card fees), plus at least 1% of outstanding principal.".

**(D) Protecting customers from being charged excessive and extortionate interest rates**

(16) Section 12.3 – "While [AIs] 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 [annualized percentage rates] charged by them on regular performing loans or delinquent revolving loans or loans re-priced due to delinquency (which are calculated in accordance with the method set out in the relevant guidelines issued by the industry Associations) or the annualized interest rates charged by them on amount in default or overdue 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 [annualized percentage rates] charged on regular performing loans or delinquent revolving loans or loans re-priced due to delinquency or the annualized interest rates charged on amount in default or overdue should not exceed the legal limit as stated in the Money Lenders Ordinance. For the avoidance of doubt, fees and charges in fixed amounts should not be included in the calculation of annualized interest rates. Fees and charges in fixed amounts imposed on loans in default should be reasonable."

**(E) Addressing the needs of the general public**

(17) Section 6.5 – "[AIs] should not impose administrative charges for handling cash deposits in Hong Kong dollars, except those in large quantities."