

Appendix 1: Consumer Council's Comments on the Draft Revised Code of Banking Practice

	CC's Comments
Part II – RECOMMENDATIONS ON BANKING PRACTICE	

Chapter 1 – Relationship between banks and customers

5. Terms and Conditions

5.1	<p>It is not clear whether the new provision requires (i) AIs to refer the queries relating to terms and conditions on behalf of their customers; or (ii) AIs to direct their customers to ask the third party service provider.</p> <p>Consumers need certainty, and CC believes a commitment in the Code is crucial. It is suggested that the provision be revised to ensure that AIs will not shed their responsibility by directing customers to first raise any queries or complaints directly with the third party service. On the other hand, AIs should seek the consent of customers before referring their queries to the third party service providers.</p>
5.13	<p>CC supports the amendment proposed in section 5.13 concerning application of sections 5.1 and 5.7 of the code to services or products offered by AI's third-party service providers.</p>

6. Fees and Charges

	<p><u>Fee waiver policy</u> [additional views]</p> <p>CC acknowledges that the initiatives of granting fee waivers represent a positive move for some disadvantaged consumers.</p> <p>However, for customers with genuine needs to become aware of such fee waivers (and special types of deposit accounts for low-balance account holders), there ought to be transparency of bank fee waiver policy which requires disclosure. As HKAB has taken on the initiative of issuing circular to encourage AIs to formulate appropriate exemption policies, CC considers it appropriate to make provision for disclosure of fee waiver policy in the Code.</p> <p>Such a provision will ensure that AIs will make information available (e.g. by posting information and/or brochures in branches or any other effective means) so that customers are informed of the bank fee waiver policy (if any).</p>
6.7	<p>CC suggests to revise section 6.7 by adding that AIs should advise customers on what can be done to avoid the charges accrued on dormant accounts.</p>

8. Collection, Use and Holding of Customer Information

8.3	<p>The term "<u>same group</u>" mentioned under section 8.3(d) is not clear. Does it refer to the same <u>banking</u> group in <u>Hong Kong</u> only or have a much wider definition?</p>
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	<p>However, a more fundamental issue is whether AIs should be allowed to make disclosure of customer information to other companies, without customers' express consent.</p> <p>In principle, CC holds the view that AIs should not pass on customers' personal information to "any company", including other companies in the same group, for marketing purposes. In UK, banks may tell customers about another company's services or products, but they are not allowed to pass on customers' data to another company.</p> <p>CC further suggests that customers should be given a choice to indicate the categories of services or products they would agree to hear about from AIs.</p>
8.7	<p>Notwithstanding the above suggestions, CC supports shortening the notice period from 3 years to 1 year, be in line with the "Code of Practice on Consumer Credit Data".</p> <p>It is of concern to CC if a standard notice, serving as an important alternative, to be inserted amongst marketing materials would be sufficient to draw customers' attention to this right.</p> <p>It is suggested to state in the Code that AIs should give prominence to the right to make such request in their standard notice.</p>
	<p><u>Data protection</u> [additional views]</p> <p>CC suggests additional information be included in section 8 advising customers about the right to access their personal data which are held by AIs hold about them, and the right to request AIs to instruct the credit reference agency to delete any account data upon account termination.</p>

10. Equal Opportunity

	<p><u>The needs of elderly customers</u> [additional views]</p> <p>CC understands that section 10 is related to the provision of banking services to persons with a disability. With reference to other jurisdictions' banking code (e.g. Australia), CC considers it appropriate to make similar provision in the Code to recognize the need for AIs to appropriately accommodate the needs of elderly customers.</p> <p>It is suggested to make provision in the Code to encourage AIs to respond to the needs of elderly customers through enhancing their access to banking services.</p>
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11. Bank Marketing

11.2	<p>CC suggests to make the provision more specific by adding, "...the advertisements should include reference to the means by which further information <u>about conditions</u> may be obtained."</p>
11.4	<p>CC believes that it is necessary to clarify if section 11.4 is intended to apply across the board to all financial services (i.e. including investment products)</p>

	<p>offered by AIs.</p> <p>If yes, CC would be concerned if the Securities and Futures Commission's prohibition for intermediaries to make cold-calls in their sale of investment products does not apply to AIs.</p>
	<p><u>Marketing to elderly customers</u> [additional views]</p> <p>Provision should be made in the Code that AIs should exercise restraint in particular when marketing investment products to elderly customers.</p>

12. Annualised Percentage Rates (APRs)

12.3	<p>The way this section is written gives an impression that the Money Lenders Ordinance is not relevant to AIs in their setting of interest rates, but the last sentence mentions a maximum cap (i.e. not exceed the legal limit as stated in the MLO) which AIs can charge.</p> <p>As a more appropriate benchmark for assessing whether the level of interest rate is extortionate, CC suggests to revise the provision to read, "...the APRs thus calculated should not be disproportionate to the principal amount owed."</p>
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13. Handling Customer Complaints

	<p><u>Alternative disputes resolution</u> [additional views]</p> <p>The existing provisions in section 13 are related to internal complaint handling mechanisms provided by individual AIs.</p> <p>CC considers it important that the Code be amended to include information on the range of alternative dispute resolution mechanisms (e.g. HKAB and HKMA) that customers can take their complaints to if they are not satisfied with the outcome given by individual AIs.</p>
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13A. Closing Bank Branches

13A	<p>CC welcomes setting the notice requirement in the Code in the case of AIs closing a branch. CC is interested to know if the proposed period is a normal time limit given by banks in other jurisdictions similar to Hong Kong in terms of demographic and geographical features.</p> <p>In any event, CC considers that the proposed minimum notice period of 30 days is not sufficient to customers, in particular for bank switching. Taking into consideration the time required to re-establish DDA, it is suggested to state in the Code that AIs should give at least 2-month notice to affected customers before closing a branch.</p> <p>Also, it would be desirable to prescribe a longer notice period if particular factors apply, rather than just for safe deposit box services. CC suggests to include such other factors as when the nearest remaining branch of a bank is a significant distance away or where no other banks operate in the same area.</p>
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	<p>With regard to the disclosure channels, CC suggests to specify in the provision that AIs should adopt various other channels (e.g. emails, SMS, telephone calls), on top of posting notice on the branch premises, in order to get the closure message through to the affected customers more effectively.</p>
	<p><u>Bank switching</u> [additional views]</p> <p>CC understands that there is a circular recently issued by HKAB which encourages AIs to provide a list of the autodebit, DDA and autocredit details upon requests by customers.</p> <p>In order to ensure customers are aware of this value added service, CC suggests to add a new provision under section 13A that advises AIs to provide the list of such information (if available) and to assist customers switch their bank accounts to another bank in the event of branch closures.</p> <p>This would facilitate account switching and reduce customers' anxiety about the risk of missing pre-arranged regular payments or receipts. Offer of help to customers in case of bank switching is a commitment written in the UK's Banking Code.</p>

Chapter 2 – Accounts and Loans

19. Loans and Overdrafts

19.7 CC wonders if the term “in advance” refers to the time before an AI’s intended imposition of default interest on customers or loosely to cover the time when an AI makes such disclosure in the terms and conditions. If it is the latter case, the term “in advance” is too general to be effective as customers should be informed in due course.

21. Guarantees and Third Party Securities

21.5 Considering the significance of the limited guarantee or third party security issue, CC will take time to study and come back with further comments in due course. The following is CC’s preliminary views on the revised provisions.

21.6 CC suggests that a notice to the surety should be given before further facilities are extended to the borrower. This would allow the surety to take steps to protect himself when he is alarmed by the amount of the intended further advance. For instance, he may suggest to the borrower alternatives to making further advance on the existing guarantee/security or even discharge the guarantee/security taking into consideration the risks and costs concerned.

It is further suggested that the notice should give details of the type and amount of further facilities sought.

23. Issue of Cards

23.4 **[Chargeback]**

Notwithstanding that section 23.4(h) of the Code requires card issuers to provide information to customers on how to use the card issuer’s error/dispute resolution processes (and section 28 on “unauthorized transaction”), CC considers it necessary to specify in more details in the Code as to what can be expected from card issuers, in view of the large number of complaints received by CC related to credit card transactions.

CC suggests that the provision to include the following:

- card issuers will claim a chargeback right (where one exists) when cardholders have raised dispute over a transaction with them;
- card issuers will provide information about chargeback (e.g. the required timeframe to lodge a dispute, applicable reasons for claiming chargeback) with credit card statements every 12 months.

Similar provision can be found in Australia’s Banking Code.

CC understands that the above may not help to resolve the problems at root but considers that enhancing consumers’ understanding of their right to make

	<p>chargeback request (Oasis Air is a case in point) is a positive step to be taken by card issuers.</p> <p>CC believes the issue of consumers not being able to stop credit card automatic payment would need to be addressed on a separate occasion with relevant stakeholders.</p>
	<p><u>Cancellation of payments</u> [additional views]</p> <p>Although it may not be possible to cancel credit card payment or automated payments for which customers have signed or given instruction to merchants, CC considers it important to add provision in the Code to require card issuers to advise cardholders as to the procedures on how to cancel payments, and assist cardholders to proceed with the cancellation matter.</p>

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

	<p><u>Unsolicited increases to credit limits</u> [additional views]</p> <p>Credit over-commitment is an important concern for consumers. Although CC believes banks will exercise due care and skill in assessing a customer's capacity to repay against the level of credit it offers to lend, consumers should be given the means to indicate refusal of unsolicited increases to credit limits. CC is of the further view that only when a customer's consent is obtained may card issuers increase credit limit.</p> <p>In our consumer contacts, consumers expressed that having the right to refuse credit limit increase may help them borrow prudently, and more importantly, to confine the extent of liability arising from any possible unauthorized use.</p> <p>A new provision in the Code to reflect such right should be made to address consumer concerns.</p> <p>Similar provision can be found in the UK's Banking Code.</p>
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26. Security of Cards/PINs

26.3	CC welcomes requiring card issuers to give advice to cardholders on the selection of PINs for accessing banking facilities.
26.5	CC welcomes requiring card issuers to regular review their security advice for cardholders' information.

Chapter 4 – Payment Services

33. Cheques

33.1	<p>The use of "usual time taken to clear a cheque" in section 33.1(g) is in CC's view too general which does not tell customers much.</p> <p>To further enhance clarity of cheque clearance times in light of the 5-day clearing process, CC suggests that the provision be amended to require AIs to provide additional information including when customers will start to earn</p>
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	interest on the money, or when the money is available for withdrawal, or when customers' account balance will be reduced.
35. Other Payment Services	
35.3	CC is interested to know the reason for making the exception proposed in section 35.3. As far as CC knows, ATM also allows transfer of funds to third party accounts.

Chapter 6 – Electronic Banking Services

38. Disclosure for e-banking Services

38.1	<p>Provision 38.1 (d) raises the practical question of how customers will be aware or ought reasonably to be aware that certain measures have been specified. CC considers it impractical, if not harsh, to expect customers to fulfill such an “obligation”. Under section 39.6, AIs are only advised to regularly review their security advice.</p> <p>CC suggests to amend the provision to read, “customers should be advised to refer to the security advice provided by AIs from time to time...”</p>
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39. Security in relation to e-banking

39.1	<p>While CC appreciates that this provision is intended to mirror sections relating to security of cards/PINs, CC believes that the language used here is too onerous on customers (in particular when the provision is linked to section 40.2 about customers' liability for loss).</p> <p>The prominence given to customer obligations gives the impression that a legal requirement imposed on customers. However, it should be recognized that the Code is designed to set minimum standards for AIs, and should not be binding on bank customers.</p> <p>CC strongly recommends that this section be revised. See for instance section 26.2 relating to security of cards/PINs which only recommends that “card issuers should advise cardholders of the need to take reasonable steps to keep the card safe and the PIN secret to prevent fraud.”</p> <p>In case there are other sections in the Code using the term “customer's obligation” or having that meaning (e.g. section 30.4), CC recommends to make appropriate adjustment to take account of the above-mentioned.</p>
39.2	CC wonders how AIs would be able to satisfy themselves that secret codes have been received by customers if such login information is delivered by mail (if not by “registered” mail).
39.3	CC welcomes requiring AIs to give advice to customers of the need to keep the device safe and the secret code secret to prevent fraud..

41. Reporting of Actual or Suspected Security Incidents

41.1	<p>In the Code, there is no express requirement on AIs' to inform affected customers of security incidents. From the fairness point of view, CC suggests to put in place such responsibility on AIs in this section for the purpose of mirroring the obligations due to customers.</p> <p>CC suggests new provisions be added in the appropriate sections of the Code to reflect the above requirement on AIs to inform affected customers of report security incidents as soon as reasonably practicable, and to ensure AIs will provide secure and reliable banking and payment systems.</p>
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Chapter 7 – Stored Value Cards (or Devices)

45. Operation of SVCs

45.5	<p>CC supports requiring SVC issuer to provide the holder of the SVC with information on the amount being debited from or credited to the SVC.</p>
45.6	<p>CC supports making channels available for SVC holders to check previous transactions but considers that the imposition of charge for the use of such channels and the choice of channels should not discourage customers from checking their transaction records. In view of the heavy use of SVCs in the community, it is suggested that a regular review should be carried out by the SVC issuer to ascertain customers' affordability and accessibility, as well as accuracy and reliability of the SVC system.</p>
45.7	<p>CC suggests to add, "as soon as reasonably practical" at the end of the sentence "<u>.... 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.</u>"</p> <p>It is further suggested to include a provision to require the SVC issuer to enhance disclosure on treatment of unclaimed assets arising from failure to locate owners of unclaimed funds.</p>