

LCQ19: Opening of bank accounts by enterprises

Following is a question by the Hon Kenneth Leung and a written reply by the Acting Secretary for Financial Services and the Treasury, Mr Joseph Chan, in the Legislative Council today (May 30):

Question:

To address the problem that quite a number of enterprises have encountered difficulties in opening and maintaining bank accounts, the Hong Kong Monetary Authority (HKMA) issued in September 2016 a circular entitled "De-risking and Financial Inclusion" to authorised institutions, emphasising that the customer due diligence (CDD) measures adopted by banks should be proportionate to the risk level, and that they were not required to implement overly stringent CDD processes. In addition, the HKMA issued a circular entitled "Guideline on Anti-Money Laundering and Counter-Terrorist Financing – Address Verification Requirements" in October 2017 to inform banks that the address verification requirements set out in the "Guideline on Anti-Money Laundering and Counter-Terrorist Financing (for Authorised Institutions)" would be formally removed, and thereafter banks would only be required to collect the address information of the customers. In this connection, will the Government inform this Council:

(1) whether the HKMA knows, since the issue of the aforesaid first circular, the respective numbers of bank account opening (account opening) applications from new enterprises received, approved and rejected by banks each month, and the average time taken for the vetting and approval of the applications; in respect of such applications, (i) how the success rate and the time for the vetting and approval of them compare with those before the issue of the circular, and (ii) the relevant figures of those in which the applicants were overseas enterprises;

(2) of the number of complaints, received by the HKMA since the issue of the aforesaid first circular, about banks rejecting account opening applications from new enterprises; whether the HKMA has compiled statistics on the types of enterprises mainly involved in such applications and the reasons for the rejection; and

(3) whether the HKMA has assessed the effectiveness of the aforesaid second circular in solving the problem of new enterprises experiencing difficulties in opening accounts; if so, of the outcome; if not, whether the HKMA will conduct such an assessment?

Reply:

President,

In the past few years, the strengthening of international efforts in

combating money laundering and terrorist financing has in general led the banking industry to enhance their relevant controls, including adopting a more comprehensive customer due diligence (CDD) process for new and existing customers.

The Hong Kong Monetary Authority (HKMA) has been reminding the banking industry that in implementing controls, they should also take care that the access of banking services by legitimate businesses and ordinary citizens should not be impeded. The HKMA has issued guidance to banks over the past two years, reiterating that banks should adopt a risk-based approach in conducting the CDD process. Specifically, banks should apply CDD measures that are commensurate with the different background, circumstances and risk levels of customers. Banks should also maintain proper communication with customers and ensure that the account opening process is transparent, reasonable and efficient, and that customers are treated fairly during the process.

In response to the HKMA's guidance, banks have taken measures to improve the account opening process. Apart from the earlier establishment of a review mechanism to re-examine unsuccessful applications and the provision of interim updates about the progress of applications, to provide greater convenience for customers all retail banks now offer a "pre-vetting" service, whereby applicants are allowed to submit account opening documents via email, fax or mail for initial pre-screening or pre-assessment by banks before attending face-to-face meetings. Some banks have also set up dedicated hotlines and dedicated branches where matters relating to account opening are handled by front-line staff with relevant training. The HKMA requires banks to enhance staff training in the aspects of professional knowledge and customer communication, so as to ensure the proper handling of customer enquiries and complaints.

The following are our specific responses to the questions:

(1) The HKMA has been monitoring the account opening situation. The retail banking sector opens on average about 10 000 new business accounts each month, of which some 60 per cent to 70 per cent belong to SMEs and start-up companies, including 2 000 new accounts opened by overseas start-up and SMEs. Of the successful cases, about 90 per cent completed the relevant account opening procedures within one month, some 50 per cent to 60 per cent within two weeks, and some as quickly as within a few days. The average unsuccessful rate of account opening applications is below 5 per cent, a substantive improvement from around 10 per cent in early 2016.

(2) In the 20 months running from the issuance of the "De-risking and Financial Inclusion" circular in September 2016 to the end of April this year, the HKMA received a total of 40 complaint cases concerning banks' refusal of account opening applications from corporates, mainly involving those engaged in trading business or financial services. In 11 of these cases, accounts were subsequently opened following reviews by banks. For most of the remaining cases, applications were rejected because applicants were not able to provide the information or documentary proof required by banks.

(3) With reference to international experience, the HKMA issued a circular in October 2017 to remind banks that in ordinary circumstances the opening of savings or current accounts requires only the collection of customers' address information but not its verification as well. Following the issuance of the circular, some banks have implemented the recommendation, while some others are updating their systems to prepare for implementation in the year.

LCQ15: Open Application Programming Interfaces

Following is a question by the Hon Chan Chun-ying and a written reply by the Acting Secretary for Financial Services and the Treasury, Mr Joseph Chan, in the Legislative Council today (May 30):

Question:

In recent years, the Hong Kong Monetary Authority (HKMA) has implemented a number of measures to promote the development of financial technologies. One of such measures is to facilitate the development of Open Application Programming Interfaces (Open API), so that banks may allow access to some of the data of their customers by their working partners (such as credit card companies, Octopus Card Limited, insurance companies, travel agents and online shopping platforms) which have access to their systems. In this connection, will the Government inform this Council:

(1) as there are comments that when banks share customers' sensitive data through Open API, it is of utmost importance to ensure that the data are kept confidential and are not tampered with, whether the HKMA has drawn up rules and guidelines on the provision and receipt of data for compliance by various parties; if so, of the details; if not, the reasons for that;

(2) whether the HKMA has (i) required both the provider and receiver of data to ensure the secure transmission of data, avoid the use of indirect modes of transmission (such as uploading and downloading through the computer server) and prevent data loss and leakage, and (ii) drawn up relevant technical guidelines in this regard; if so, of the details; if not, the reasons for that; and

(3) given that banks in general have to obtain the consent of their customers prior to sharing the data about them with third parties, and to ensure that their customers are kept informed of the status of data sharing, whether the HKMA has plans to remind the public to stay alert to the security of sensitive data in deciding the items of data about them in respect of which they give consent to banks for sharing with third parties; if so, of the details; if not, the reasons for that?

Reply:

President,

Our consolidated reply to the three parts of the question is as follows:

The Hong Kong Monetary Authority (HKMA) attaches great importance of data security and integrity in Open Application Programming Interfaces (Open API). It has therefore included in the Open API consultation paper issued in January 2018 some high-level proposals on the protection of data, and welcomes views from the industry.

At the same time, the HKMA plans to work with the banking industry, after the Open API framework is formally announced, to develop a set of risk-based security and operational guidance for data providers (banks) and data consumers (third party service providers) to follow. The set of guidance will also contain technical standards that are internationally recognised (for example, the use of strong encryption algorithms for external network transmission, sound key management, and sufficient controls to maintain and verify the integrity of information) to ensure that there are sufficient security and protection measures for the use of Open API.

After banks have rolled out Open API, the HKMA plans to work with the industry to conduct public education and provide information to the public, so as to raise their awareness on the pros and cons of sharing personal data under Open API and to allow the public to choose and use Open API products and services wisely.

Besides, if any organisation is involved in the collection, holding, processing and using of personal data, as a data user, it should also comply with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486).

Guideline on Authorization of Virtual Banks

The following is issued on behalf of the Hong Kong Monetary Authority:

The Hong Kong Monetary Authority (HKMA) published today (May 30) a revised Guideline on Authorization of Virtual Banks following the completion of a public consultation.

During the public consultation, the HKMA received submissions from a total of 25 respondents, including the Hong Kong Association of Banks, the DTC Association, the Consumer Council, chambers of commerce, an industry association from the fintech community, technology companies and professional firms.

All respondents supported the introduction of virtual banking in Hong Kong. Most of them agreed that virtual banks should be subject to the same supervisory requirements applicable to conventional banks. No respondents raised objection to allowing both financial and non-financial firms to operate a virtual bank in Hong Kong, and there was broad support for virtual banks to operate in the form of a locally-incorporated entity with no physical branches.

Specific comments were, however, received on several principles in the Guideline. Firstly, while many respondents agreed that virtual banks, like conventional retail banks, should play an active role in promoting financial inclusion, a few respondents questioned the reasonableness of this supervisory expectation and did not favour the requirement on virtual banks not to impose minimum balance requirements or low-balance fees on customers. The HKMA would like to point out that a key objective of introducing virtual banks in Hong Kong is to help promote financial inclusion by leveraging on these banks' information technology (IT) platforms that would lower the incremental cost of taking in additional customers. The HKMA therefore remains of the view that virtual banks should not impose any minimum balance requirements or low-balance fees on customers.

Secondly, a few respondents did not support requiring virtual bank applicants to produce an exit plan, on the ground that no similar requirement applied to conventional bank applicants. Given that virtual banking is a new business model in Hong Kong, the HKMA considers it prudent to require virtual bank applicants to develop an exit plan. The purpose of an exit plan is to ensure that, should it become necessary, a virtual bank can unwind its business operations in an orderly manner without causing disruption to the customers and the financial system. Leading overseas supervisory authorities have introduced similar requirements for virtual bank applicants.

Thirdly, several respondents requested the HKMA to lower the minimum paid-up capital requirement of HK\$300 million for virtual bank applicants. It should be noted that the minimum paid-up capital requirement of HK\$300 million is stipulated in the Banking Ordinance and is applicable to all licensed banks. It is neither possible nor appropriate to lower the minimum capital requirement for virtual bank licensees.

A number of respondents requested the HKMA to elaborate on some of the principles contained in the Guideline. The HKMA has taken on board many of these comments, and has made suitable changes to the relevant paragraphs in the Guideline. A detailed summary of the comments received during the public consultation and the HKMA's responses can be found in the Consultation Conclusions at Annex 1. A revised Guideline, highlighting the key changes compared with the version published for consultation, is at Annex 2.

Since the HKMA announced its intention to encourage virtual banking in Hong Kong last September, it has received enquiries and indications of interests from over 50 companies. While it is unclear at this stage how many of these companies will eventually put in applications to operate a virtual

bank, they should appreciate that the vetting and approval process entails extensive resources and efforts by both the applicants and the HKMA. For those companies that have not been able to submit a substantially complete application to the HKMA by August 31, 2018, they are most unlikely to be included in the first batch of virtual bank applications to be processed by the HKMA. In processing these applications, priority will be given by the HKMA to those applicants which can demonstrate that (i) they have sufficient financial, technology and other relevant resources to operate a virtual bank; (ii) they have a credible and viable business plan that would provide new customer experience and promote financial inclusion and fintech development; (iii) they have developed or can develop an appropriate IT platform to support their business plan; and (iv) they are ready to commence operation soon after a licence is granted.

The Chief Executive of the HKMA, Mr Norman Chan, said, "We are pleased to have broad support received during the public consultation for the development of virtual banking. Interested parties are beginning to submit applications to the HKMA. We will evaluate the applications carefully and expeditiously, applying the principles set out in the revised Guideline. We hope to be in a position to start granting licences to virtual banks towards the end of this year or in the first quarter of next year."

Appointments to Statistics Advisory Board

The Government announced today (May 30) that the Secretary for Financial Services and the Treasury has appointed members to the Statistics Advisory Board (SAB) for a new term of two years from June 1, 2018, to May 31, 2020.

The SAB of the new term includes 12 non-official members, seven of whom are serving members and five newly appointed members. The five new members are Mr Victor Chan Kok-wai (Hotel Industry), Mr Samuel Lau Kin-pui (Logistics Industry), Ms Michelle Leung Oi-pui (Electronic Commerce Industry), Dr Vivian Lou Wei-qun (Academia) and Mr Gavin Poon Ka-ming (Life Science and Technology Sector).

The Commissioner for Census and Statistics, Mr Leslie Tang, said, "Members of the SAB are established professionals from different disciplines. Their diverse backgrounds will provide the Census and Statistics Department with invaluable insights and help ensure that its statistical work will continue to meet the evolving needs of our community."

Mr Tang added, "We are grateful to the four outgoing members, Ms Christina Law Sau-mui, Mr Anthony Leung Ming-tim, Mr Patrick Ting Siu-yin and Mr Jason Wong Chun-tat, for their unfailing support and wise counsel to the

SAB that has helped foster the development of the Government's statistical work over the past years."

The SAB is an advisory body established in 1972 to advise the Commissioner for Census and Statistics on matters pertaining to official statistical work. Its membership consists of professionals from the business sector, the academia and the community, which provides for a wide representation to assist the Commissioner in integrating views of data users, data suppliers and statisticians.

Following is the membership of the SAB for the new term from June 1, 2018, to May 31, 2020:

Chairman (Ex officio)
Commissioner for Census and Statistics

Official members
Director of Planning (or representative)
Government Economist (or representative)
Representative from the Financial Services and the Treasury Bureau

Non-official members
Ms Clara Lau Wai-ping
Professor Leung Siu-fai
Professor Tsui Kwok-leung
Mr Augustine Wong Ho-ming
Ms Karen Chan Ka-yin
Mrs Cheung Ang Siew-mei
Ms Nicole Yuen Shuk-kam
Mr Victor Chan Kok-wai *
Mr Samuel Lau Kin-pui *
Ms Michelle Leung Oi-pui *
Dr Vivian Lou Wei-qun *
Mr Gavin Poon Ka-ming *

* Newly appointed

LCQ11: Introduction of mandatory cooling-off period to protect consumers

Following is a question by the Hon Shiu Ka-fai and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (May 30):

Question:

Last month, the Consumer Council (CC) recommended to the Government the introduction of a mandatory cooling-off period targeting certain industries (including the beauty industry) and specific transaction modes. Regarding the reply of the Secretary for Commerce and Economic Development on the 9th of this month to my question concerning the recommendation, will the Government inform this Council:

- (1) as CC's study on the introduction of a mandatory cooling-off period does not cover cooling-off arrangements offered on a voluntary basis by traders in other jurisdictions, of the reasons why the authorities did not request CC to conduct a study that covers such arrangements;
- (2) whether it has assessed if CC has a predetermined stance before conducting the aforesaid study, and whether the outcome of the study is objective and fair; of the reasons why the authorities did not in the first place assign the study to a professional consultant with a neutral stance;
- (3) of the amount of public money that the authorities allocated to CC for conducting the study; whether it knows the manpower deployed for and the number of man-hours involved in the said study;
- (4) as the aforesaid reply to the question has not given a direct answer as to whether currently there are jurisdictions which have introduced a mandatory cooling-off regime for the beauty industry, whether the authorities know if CC has actually identified any jurisdiction which has introduced such a regime;
- (5) given that CC does not have the power to conduct investigations to ascertain if the complaints received are substantiated, whether the authorities know the basis on which CC made the remark that "operators in the beauty industry have adopted various types of unfair trade practices in recent years"; whether they have assessed if such a remark made by CC has tarnished the reputation of the beauty industry, and whether it is a responsible way of doing things;
- (6) given that CC will only take up the role of a conciliator in handling consumer complaints and it does not have the power to conduct investigations, whether the authorities have assessed if CC has gone beyond its statutory functions by repeatedly and publicly stating, under the circumstances of not having grasped information on the number of substantiated cases, that sales practices which seriously damage the rights and interests of consumers have emerged from time to time in certain industries;
- (7) as CC considers that, in respect of legitimate traders in general, the imposition of a mandatory cooling-off period will not result in a large number of consumers cancelling their contracts, and therefore the impact should be limited, whether the authorities know the basis on which CC made such a remark; whether CC had conducted any study and gained an understanding of the real situation from the industries concerned before making such a

remark; if CC had not conducted any study and consultation, of the reasons why CC has made such a remark;

(8) as CC has indicated that since it has formulated its recommendation after making reference to the experience of other jurisdictions, it believes that the recommendation has struck a balance between protecting consumers' legitimate rights and interests and maintaining a business-friendly environment, whether the authorities know how CC ascertains if the practices of such jurisdictions are applicable to Hong Kong; the reasons why CC has not made reference to the experience of those jurisdictions that allow traders to offer a cooling-off period on a voluntary basis;

(9) as CC, having considered the general level of the relevant charge, has recommended that an administrative fee of not more than 3 per cent of the credit card transaction value may be deducted by traders from the refund if consumers have paid by credit cards, whether the authorities know what data or study outcome is held by CC in support of its remark that "3 per cent is the general level of the relevant charge";

(10) as CC considers that issues concerning acquiring banks/companies increasing their administrative fees for refund for transactions made by credit cards or delaying payment to traders are commercial arrangements between the acquiring banks/companies and traders, and not directly related to the imposition of a cooling-off period, whether the authorities know if CC had duly consulted the local banking and beauty industries to gain an understanding of the real situation before making such a remark; if CC had, of the details; if not, the reasons why CC has made such a remark;

(11) as CC has recommended that a mandatory cooling-off period be applicable to contracts of not less than six months for beauty services, whether the authorities know if CC had conducted any study and duly consulted the industry concerned to gain an understanding of the real situation before putting forward such a recommendation; if CC had not conducted any study or consultation, of the reasons why CC has put forward such a recommendation;

(12) of the reasons why the aforesaid reply to the question has not given an answer to the question as to whether CC had discussed its recommendation with the banking industry to ascertain the feasibility of the recommendation;

(13) whether it knows the respective numbers of banks which (i) have ceased providing Point of Sales terminals and acquiring service to new clients of beauty service companies, (ii) imposed in the past five years the following measures on existing clients of beauty service companies: limiting the credit card transaction value; increasing the deposit required and delaying payment to traders (such as extending the period from 30 days to five months), and (iii) in providing acquiring service, charge those beauty service companies which apply for cancellation of credit card transactions (including purchase-by-installment transactions) an administrative fee equivalent to 4 per cent to 10 per cent of the total transaction value;

(14) whether it knows that after CC published its recommendation, quite a number of beauty service companies have immediately been notified by banks

that the refund handling fees for customers' purchase-by-installment transactions will be further increased and repayment to traders will be delayed (such as extending the period from a month to 90 days), and even those clients who have collateral with the banks are also treated in the same way;

(15) of the reasons why the aforesaid reply to the question has not given an answer to the following question: whether, before making its recommendation (i.e. the trader can deduct from the refund the value of the service used and the amount shall be calculated pro rata to the total consideration stipulated in the contract), CC has considered (i) the fact that the trader's cost of providing a single unit of goods or service to the customer is usually higher than that of providing a batch of such goods or service, making it very likely for the trader to eventually bear the relevant differences in the cost, and (ii) if this recommendation will induce many people to exploit the loophole to enjoy part of the services at a lower average price through the purchase of packages;

(16) of the reasons why the aforesaid reply to the question has not given an answer to the following question: whether the authorities know the justifications for CC to recommend that consumers may request for a refund without any reasons, and whether it has considered if this recommendation may lead to abuses or even be exploited as a strategy to undermine competitors in the business arena, which may eventually throw the market into chaos;

(17) whether it has considered, instead of introducing a mandatory cooling-off period, reminding consumers through public education that they may choose to patronise beauty service companies which offer a cooling-off period on a voluntary basis, and with reference to the banks' current practice of keeping audio recordings of the selling process, requiring beauty service companies to make audio or video recordings of the selling process as a proof that no unfair trade practices have been employed; and

(18) whether it has studied the contributions made by the beauty and related industries to the economy of Hong Kong and in providing employment opportunities; if so, of the details; if not, whether it will conduct such a study?

Reply:

President,

A consolidated reply to the 18 parts of the question is provided below:

The Consumer Council (the Council) is an independent statutory body. According to the Consumer Council Ordinance (Cap. 216), the functions of the Council include collecting, receiving and disseminating information concerning goods and services, receiving and examining complaints by consumers of goods and services, as well as taking such action as it thinks justified by information in its possession, including tendering advice to the Government, so as to protect and promote consumer rights. The Council has studied numerous consumer issues over the years, and is experienced in this

regard. The Government provided \$6.3 million to the Council in the year 2016-17 to support the Council in undertaking a number of new studies on individual consumption markets and legal protection for consumers, including the study on cooling-off period. It is difficult to quantify the manpower expenditure for individual studies separately.

The Council's "Report to Advocate Mandatory Cooling-Off Period in Hong Kong" aims to recommend to the Government the imposition of a mandatory cooling-off period, and suggests principles for a legislative proposal. Besides drawing references from other jurisdictions' legislative arrangements and implementation experience, the Council also looked into and studied the situation of the local market, including the operation of credit card schemes, factors that may affect the administrative fees charged on credit card usage, the general level of such fees etc. In formulating the proposals on operational arrangements (including the applicable contract duration, calculation of deductible amount etc.), based on its experience in handling complaints and understanding of the trades' operation, and having considered the feasibility of various options and all relevant factors such as how to minimise the chance of abuse, and objectively analysing and balancing between consumer rights and impact on business operation, the Council put forth the proposal that it considers to be the most practical and suitable for Hong Kong.

In recent years, both the Hong Kong Customs and Excise Department and the Council have received numerous complaints where consumers entered into beauty or fitness services contracts involving large amount of pre-payment and/or long contract duration under high pressure sales tactics, and there have been calls from the Legislative Council (LegCo) and the community for the Government to impose mandatory cooling-off period on these contracts by way of legislation. For example, at the meeting of the LegCo Panel on Economic Development (ED Panel) on May 23, 2016, members passed the following motion – "That this Panel urges the Government to introduce legislation on imposition of mandatory cooling-off periods, and accord priority to implementing a statutory cooling-off period for pre-paid services involving a lot of complaints and large amount of payment, such as those provided by fitness centres and the beauty industry, so that consumers may unconditionally receive a refund of the paid fees and cancel the contracts during the cooling-off period with a view to protecting consumers' rights, thereby indirectly dampening the incentive to engage in unfair and high-pressure marketing practices, and ultimately safeguarding practitioners of the relevant trades as well." In addition, several LegCo members wrote to the ED Panel, urging the Government to conduct relevant study and legislative work proactively, with a view to imposing a cooling-off period on contracts involving pre-payment, such as those for beauty and fitness services, in order to further protect consumer rights.

The Council has submitted its recommendations to the Government, and the Commerce and Economic Development Bureau (CEDB) would need to consider the recommendations in detail and make specific policy decisions. We are working with relevant Government departments to study various issues relating to legislating on cooling-off period arrangement, including the scope of

application; definitions of sectors; implementation details; redress mechanism; and exemptions, etc.; and will consider the appropriate implementation arrangements. We thank the Honourable Shiu for conveying his concern on the issue of legislating for cooling-off period and relaying the beauty trade's opinion on the Council's report. Our goal is to submit the Government's proposed framework to LegCo within this year, and consult the public thereafter. We will listen to the views of and fully consult the community, including the stakeholders.