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Attention Mike Callaghan AM PSM

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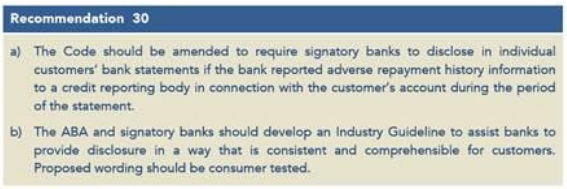
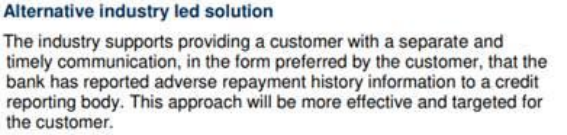
Submission on the Banking Code of Practice

Dentons is pleased to have the opportunity to comment on the Banking Code of Practice (**BCOP**).

Our response is limited to matters in respect of which our practice groups and clients have raised concerns.

BCOP clause and excerpt	Dentons comment
Clause 101 (a) *'a copy of any formal demand or default notice we send to the borrower after we send it;'*	The section refers to a 'formal demand', which raises the question, what is the difference between a formal demand and a non-formal demand for the purposes of this clause. It would be helpful to have guidance on the intended meaning.
Clause 107 *'We will not accept a guarantee from you until the third day after you have been given the information provided at paragraph 96 to 99.'*	A question that often arises when issuing transactional documents is whether *'accept a guarantee'* means that a lender: • can physically accept the executed guarantee from the guarantor, but should not settle the loan until after the third day; or • should not physically accept the executed guarantee from the guarantor. The former is the more commonly adopted approach, and it would be helpful to have clarification that this interpretation complies with the code.

Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► Sayarh & Menjra ► Larraín Rencoret ► Hamilton Harrison & Mathews ► Mardemootoo Balgobin ► HPRP ► Zain & Co. ► Delany Law ► Dinner Martin ► For more on the firms that have come together to form Dentons, go to dentons.com/legacyfirms

Clause 115 (b) *'not require us to first enforce any mortgage or other security that the borrower has provided if we reasonably expect that the net proceeds of that enforcement will not be sufficient to repay a substantial portion of the guaranteed liability, or because of the borrower not providing us with information, documents, or access to premises or assets as required, we are unable to reasonably assess whether the net proceeds of that enforcement will not be sufficient to repay a substantial portion of the guaranteed liability.'*	A common issue that arises in the enforcement context is what is intended by '*a substantial portion…*'. It would be helpful to have guidance on the intended meaning.
Clause 179 *'We will tell you if we report any payment default of yours under your loan to a credit reporting body. You can also independently obtain a copy of your report directly from a credit reporting body.'*	The Khoury Report (the **Report**) recommendation that led to the insertion of clause 179, appears to have been directed at having banks notify customers when adverse repayment history information was reported under Comprehensive Credit Reporting. Section 11.3 the Report noted that since March 2014 it has been possible for banks to tell credit reporting bodies if a customer makes a payment that is more than 14 days late (adverse repayment history information). The Report discusses the merits of requiring banks to disclose to customers if the bank reported adverse repayment history information, ultimately making the following recommendation:  **Recommendation 30** a) The Code should be amended to require signatory banks to disclose in individual customers' bank statements if the bank reported adverse repayment history information to a credit reporting body in connection with the customer's account during the period of the statement. b) The ABA and signatory banks should develop an Industry Guideline to assist banks to provide disclosure in a way that is consistent and comprehensible for customers. Proposed wording should be consumer tested. The ABA's response to the Report shows that the ABA supported that recommendation in principle, but saw practical issues in giving the notice through customers' bank statements. The ABA then proposed the following industry led solution:  **Alternative industry led solution** The industry supports providing a customer with a separate and timely communication, in the form preferred by the customer, that the bank has reported adverse repayment history information to a credit reporting body. This approach will be more effective and targeted for the customer. Accordingly, it appears clear the intention was to introduce a requirement for banks to tell customers when the bank has reported adverse repayment history information (not default information). This is consistent with the position that customers would not otherwise be made aware of an adverse repayment history information listing, whereas they would be notified of a default listing (via a section 21D notice).

	However, the broad wording of clause 179 as introduced makes it unclear whether it is intended to impose an obligation on banks: 1. to tell customers about having reported adverse repayment history information only: or 2. to also tell customers about having reported default information. It would be helpful to have clarification regarding whether this clause is intended to require banks to tell customers after default information is reported (in addition to having told them before, by way of a section 21D notice).

Yours sincerely

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