



CODE COMPLIANCE MONITORING COMMITTEE

(the CCMC)

Guidance Note No. 5

CCMC Compliance Investigations – concurrent forums

The CCMC is an independent compliance monitoring body established under clause 36 of the revised 2013 Code of Banking Practice (the 2013 Code). When endorsing the 2013 Code the subscribing banks agreed that Clause 36 would commence on 1 February 2013. At the same time, a new Mandate for the CCMC (the Mandate) which details its powers and functions became effective.

This Guidance Note is issued in accordance with clause 36(i) of the 2013 Code and clause 1.4 of the Mandate. It describes the CCMC's likely approach about how it will exercise its obligations under clause 6.2 of the Mandate for allegations that have been concurrently raised in another forum.

All matters that come before the CCMC are considered on the basis of their individual circumstances, so this information operates as a guide only. Further, no Guidance Note can anticipate all issues that may need to be taken into account in a particular case.

Subscribing banks have until 1 February 2014 to adopt the 2013 Code. Until that time the provisions of the 2004 version of the Code will apply. During the period to 1 February 2014, the CCMC will, therefore, monitor and investigate banks' obligations in respect of the 2004 Code.

Concurrent Forums

1. Clauses 6.2(ii) and (iii) of the Mandate set out the CCMC's obligations where the events giving rise to an allegation that a Code subscribing bank has not complied with its Code obligations, are also being considered concurrently by another forum, where that forum may make a final Determination as to whether a breach of the Code has occurred. The term "forum" is defined in clause 13 of the Mandate and includes a court, tribunal and the Financial Ombudsman Service (FOS).
2. In summary:
 - a. clause 6.2(a)(ii) of the Mandate states the CCMC must not consider such an allegation until the other forum has determined or declined to determine (for whatever reason),

- whether a breach of the Code has occurred; and
- b. clauses 6.2(a)(ii) and (iii) of the Mandate state that where an allegation is concurrently before another forum (as defined in the Mandate), and that forum determines a breach of the Code has, or has not occurred, the CCMC must adopt those findings.
3. Accordingly, where the CCMC receives an allegation that is concurrently before another forum, it will not commence an investigation until such time as it has been notified of the outcome of those other proceedings.
 4. In the interim (subject to paragraph 5 of this Guidance Note), the CCMC will take such steps as it considers appropriate to make the relevant bank aware of the allegation.
 5. As part of that process, the CCMC secures the written consent of the person making the allegation to the exchange of their personal information by the CCMC and the bank.
 6. Where the person making the allegation does not provide their consent or withdraws their allegation or consent before the proceedings in the other forum have been completed (or at all), the CCMC will, on a case by case basis, consider whether:
 - a. the matter should be brought to the bank's attention on a de-identified basis having regard to the nature of the concerns raised in the allegation; and/or
 - b. the matter should be the subject of compliance monitoring activity pursuant to clause 5 of the Mandate.
 7. Where the CCMC adopts the Code compliance finding of another forum this will be done as a Committee resolution and both parties will be informed of the outcome (see also paragraph 2(b) above).
 8. If the proceedings in the other forum are finalised without a decision on whether a Code subscribing bank has complied or failed to comply with its Code obligations, then after becoming aware of this outcome the CCMC will ask the person making the allegation to confirm if they still consent to the bank and the CCMC exchanging their personal information to facilitate the CCMC's investigation and whether, in the context of the proceedings in the other forum, they still retain the Code compliance concerns initially raised with the CCMC in their allegation:
 - a. If the answer is 'yes', the CCMC will ask the bank to provide its formal response to the allegation before the CCMC considers any further steps in the matter.
 - b. If the answer is 'no' or no response is received, the CCMC will consider the allegation to have been withdrawn – see paragraph 6 above and CCMC Guidance Note 6.

This Guidance Note reflects the CCMC's views as at the date of publication. Please refer to the CCMC website (www.ccmc.org.au) for the latest version of this document.