



**Code Compliance
Monitoring Committee**

**INQUIRY REPORT:
FOREIGN CURRENCY LOANS**



May 2012

ABOUT THE CCMC

The Code Compliance Monitoring Committee (the CCMC) is an independent compliance monitoring body established under Clause 34 of the Code of Banking Practice.

The Code of Banking Practice 2004 (the Code) is a voluntary code of conduct which sets standards of good banking practice for subscribing banks to follow when dealing with persons who are, or who may become, an individual or small business customer of a Code subscribing bank or a guarantor.

The CCMC's vision is to promote compliance with the Code and thereby contribute to the improvement of standards of practice and service by the banks. The CCMC adopts a collaborative approach to working with banks in order to achieve compliant outcomes and continuously improve industry standards.

The CCMC conducts a compliance program that reflects the objectives of the Code comprising three core activities namely: monitoring, investigating and influencing. The CCMC's influencing role includes conducting inquiries for the purposes of monitoring compliance into a particular requirement or requirements of the Code.

The CCMC is able to use a range of investigative and monitoring techniques when conducting these inquiries including:

- requests for information from subscribing banks;
- compliance visits to subscribing banks' premises;
- market research activities such as mystery or shadow shopping, surveys and forums; and
- engaging external experts to provide additional assistance.

The findings of these inquiries are provided to all participating banks, so as to influence and encourage positive change in industry practices and promote industry improvements.

CCMC reports do not identify individual banks or consumers and after a period of consultation, they may be publicly available, via the CCMC website, www.ccmc.org.au . You can subscribe to automatically receive reports and other CCMC publications at www.ccmc.org.au/subscribe/ .

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A EXECUTIVE SUMMARY

WHAT WE DID

In February 2012, the CCMC conducted an Inquiry into how well banks, who subscribe to the Code, met their obligations under Clause 21.2 of the Code when providing a Foreign Currency Loan.

Clause 21.2 of the Code states:

'Prior to granting a foreign currency loan in Australia, we will provide to you a general warning in writing of the risks arising from exchange rate movements and will inform you of the availability of mechanisms, if they exist, for limiting such risks.'

The key Code commitments associated with the operation of Clause 21.2 are:

- Ensuring that information about the risks associated with a Foreign Currency Loan is provided in a format that ensures that the customer is able to make an informed decision as to the suitability of the product prior to entering into the loan contract.
- Ensuring key information about available risk mitigation mechanisms is provided with sufficient time to allow for proper consideration and implementation of any risk mitigation mechanism.

This CCMC Inquiry was prompted by a referral from the Financial Ombudsman Service Ltd (FOS) to the CCMC in late 2010, following a dispute between a bank and a consumer in which allegations were made that the bank failed to provide a general warning of the risks associated with exchange rate movements and failed to inform the customer of the availability of mechanisms for limiting such risks.

This Inquiry was conducted by the CCMC as a proactive measure.

Six banks confirmed that they provide Foreign Currency Loans and submitted a written response to the Data Gathering Questionnaire, highlighted in Appendix A of this report. The remaining seven subscribing banks, as at February 2012, confirmed they do not provide Foreign Currency Loans.

WHAT WE FOUND

With only six of the subscribing banks offering a Foreign Currency Loan product and fewer than 300 loans and/or trades advanced in the sample period between 1 January 2011 and 30 June 2011, Foreign Currency Loans represent a small proportion of overall business operations for the subscribing banks.

Each bank is meeting its obligations under Clause 21.2 of the Code by providing a general warning in writing of the risks arising from exchange rate movements, and information about possible risk mitigation mechanisms available, prior to granting a Foreign Currency Loan contract. However, two banks provide the required information at the time the Letter of Offer is produced, without previously discussing risks with customers. The previous guidance provided by the CCMC to banks in January 2011 (See Appendix 3) in light of the FOS referral, recommended that the warnings be given prior to any formal bank offer for the Foreign Currency loan, in order to ensure the customer has sufficient time to consider risks and implement mitigation strategies. This early disclosure will allow better informed decision making by customers.

Figure 1 below outlines some areas of good industry practice identified in the course of conducting the Inquiry.

Figure 1: Summary of Good Industry Practices

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1. •Execution of a Foreign Exchange Risk Disclosure document prior to the production of the Letter of Offer document for a Foreign Currency Loan.
 2. •Discussion about the risks involved with a Foreign Currency Loan at the initial loan interview stage in addition to the information provided within the written foreign exchange risk warning.

RECOMMENDATIONS

After conducting the Inquiry regarding Foreign Currency Loans, the CCMC has made four recommendations to improve good practice outlined in Section E of this report.

A summary of recommendations is outlined in Figure 2 below.

Figure 2: Recommendations

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- Recommendation 1** •Provision of Risk Disclosure Brochures at the earliest available opportunity in the loan application process. This will ensure customers make informed decisions about the risks associated with a foreign currency loan.
 - Recommendation 2** •Ensure information about available risk mitigation mechanisms is provided in a timely manner.
 - Recommendation 3** •Consider providing information regarding risks and risk mitigation online.
 - Recommendation 4** •Execution of a Risk Disclosure Document prior to the production of a Letter of Offer Document for a Foreign Currency Loan.

TOWARDS BETTER PRACTICE

After conducting this Inquiry, the CCMC has concluded that the six banks offering Foreign Currency Loans maintain effective systems and procedures in relation to the risks associated with Foreign Currency Loans and possible risk mitigation mechanisms to meet their obligations under Clause 21.2 of the Code. However, the CCMC considers that a better practice approach would be for banks to ensure that their procedures incorporate the provision of information before a Letter of Offer is issued. This would allow sufficient time for the customer to consider the risks and mitigation before proceeding with the loan and ultimately encouraging better informed decisions. This approach will help banks meet their obligations under Clause 2.1(b)(i) to promote better informed decisions by providing effective disclosure.

All six banks reported in the six month period between 1 January 2011 and 30 June 2011 that they received no complaints in respect of Foreign Currency Loans.

B INTRODUCTION

WHAT IS A FOREIGN CURRENCY LOAN

A Foreign Currency Loan is a loan facility that allows for a sum of money to be borrowed in Australia in a currency other than Australian Dollars. Foreign Currency Loans may be used for investment in another country by Australian residents or businesses, and are commonly used by businesses to facilitate import and/or export activities. As the loan repayment liability remains payable in Australian Dollars, adverse movements in foreign exchange rates may result in an increase in the loan debt owed by the customer.

BACKGROUND

In 2010 the CCMC received a referral from the Financial Ombudsman Service in respect of a complaint lodged with FOS regarding the provision of a Foreign Currency Loan. During the course of FOS's investigation, the Banking and Finance Ombudsman has found that the following obligations arise in respect to clause 21.2 of the Code:

- the bank should provide a general warning in writing to the individual or small business customer, about the risks that arise from exchange rate movements;
- that the warning (in writing) should be in a format that is in addition to any warnings that form part of the eventual loan documentation;
- that information should be provided to the individual or small business customer about the actual mechanisms for limiting exchange rate movement risk that are available; and
- that the information about the exchange rate risk mitigation strategies should be provided in a time and manner that ensures that the individual or small business customer is aware of the risks and the steps that can be taken to mitigate those risks prior to any formal bank offer for the foreign currency loan facility.

The CCMC advised all banks of the FOS view with regard to Foreign Currency Loans in January 2011 (see Appendix 3).

OBJECTIVE

The objective of this Inquiry was to determine the overall compliance of banks with the relevant provisions of the Code. More specifically, the Inquiry allowed the CCMC to assess:

- whether banks have systems and procedures to assist with compliance with their obligation regarding Foreign Currency Loans, specifically clause 21.2 of the Code (key commitments under Clauses 2.1 (b)(i) and 2.2 are also relevant);
- the type of information provided by banks about the risks involved with a Foreign Currency Loan, and when in the loan application process this information is provided;
- how information about possible risk mitigation techniques for a Foreign Currency Loan are brought to the customer's attention;
- the accessibility and visibility of a general warning about the risks of a Foreign Currency Loan;
- examples of good industry practice;
- what key controls the banks have in place to ensure compliance with Code obligations; and
- how often these key controls are monitored.

SCOPE

In order to assess compliance with the relevant provisions of the Code, the CCMC requested the following information from each bank providing Foreign Currency Loans:

- the number of loans agreed with individual or small business customers between 1 January 2011 and 30 June 2011;
- the process by which Foreign Currency Loans risks are communicated to customers, along with a copy of the relevant disclosure documents;
- copies of any documents which include risk warnings and any other relevant documentation available in respect of Foreign Currency Loans;
- when in the loan process the bank provides details of available risk mitigation measures;
- any differences in the information provided about risk disclosure and mitigation, depending on the size and nature of the loan;
- any differences in the loan application process for individual and small business customers;
- details of any compliance monitoring activities undertaken by the bank regarding Foreign Currency Loans in the period 1 January 2011 to 30 June 2011; and
- the number of customer complaints received in relation to Foreign Currency Loans.

C METHODOLOGY

Each subscribing bank was issued with a questionnaire in February 2012. Information about Foreign Currency Loan activities was requested by way of a quantitative questionnaire with nine questions. The survey requested information concerning activities for the period 1 January 2011 to 30 June 2011 only.

Six banks confirmed that they provide Foreign Currency Loans and submitted a written response to the questionnaire, highlighted in Appendix A of this report. The remaining seven banks confirmed they do not provide Foreign Currency Loans.

D INQUIRY FINDINGS

The following commentary reflects a summary of the key responses to each of the nine questions.

Q1. How many foreign currency loans for individuals and small businesses were provided by the bank in the period 1 January 2011 to 30 June 2011?

The responses received indicate a small number of foreign currency loans were facilitated across the six banks within the sample period.

Key Findings

A total of 285 new loans were recorded in the sample period from 1 January 2011 to 30 June 2011.

One bank extended 189 of these loans although it noted that its operating system records every foreign currency loan on a transaction by transaction basis for all trade related deals (these trade related loans are extended for a period of one month to six months only).

This same bank confirmed that Foreign Currency Loans for a period of one to five years (non-trade related) would likely represent only 3 to 4 of the total 189 transactions recorded.

Foreign Currency Loans are generally provided for business or investment purposes only.

One bank provided one loan only in the sample period, while another bank did not extend any new Foreign Currency Loans in the sample period.

- Q2. At what point in the process of a Foreign Currency Loan application does the bank provide risk warnings regarding currency movements?**
- Q3. Please provide copies of any documents which include the risk warnings and any other relevant document used by the Bank in respect of Financial Currency Loans, such as a Foreign Exchange Advice Brochure.**
- Q4. When in the loan process does the bank provide details of the availability of risk mitigation measures for these risks?**

Whilst the questionnaire did not ask each bank to define the term “granting” in respect of Foreign Currency Loans, the CCMC considers it reasonable that the term be defined as the drawdown of loan monies under a loan contract. A loan drawdown can proceed only when loan documents are executed and any conditions precedent to the loan facility are demonstrated and/or met.

The responses to questions 2, 3 and 4 have been consolidated below.

Each bank confirmed that they provide a written risk warning to the customer together with information about possible risk mitigation measures, prior to granting a Foreign Currency Loan. This information suggests compliance with Clause 21.2 of the Code.

Of the six banks providing Foreign Currency Loans:

Key Findings

- Two banks provide a written risk warning within the Letter of Offer for the Foreign Currency Loan.
- Three banks discuss the risks associated with a Foreign Currency Loan at the initial interview stage, in addition to providing a risk warning within the Letter of Offer for the Foreign Currency Loan. One of these banks also requires a separate risk warning document to be signed at the same time as the Letter of Offer.
- One bank requires a risk disclosure document to be signed prior to the production of the Letter of Offer for a Foreign Currency Loan.

Some examples of the risk warning information provided within the Letter of Offer for a Foreign Currency Loan are represented below:

Example 1

"This notice is intended to provide you with a general warning of the risks that can arise from adverse exchange rate movements when transacting in a foreign currency, and to advise you that other risks also exist. Your liability in Australian dollars will increase, possibly very substantially, if there is an adverse movement in either the Australian dollar relative to the currency of the foreign currency facility or transaction or the foreign currency relative to the Australian dollar. There is also a risk of adverse movements in the interest rate that applies to the foreign currency facility or transaction."

Example 2

"Foreign exchange markets are inherently risky and unpredictable. Not only can foreign exchange rates move unfavorably, meaning you will need more Australian Dollars to satisfy your foreign currency obligations, but other events may also impact upon your obligations. A foreign currency loan may be appropriate for you if you properly understand the risk involved in borrowing in a foreign currency. If you do not understand how foreign exchange markets operate, you should seek independent legal and financial advice prior to entering into any obligations that involve foreign exchange markets".

Some examples of the type of information provided about risk mitigation measures are detailed below:

Example 1

"You should also be aware that in some circumstances mechanisms may be available for limiting these risks. Such products may include products ranging from forward foreign exchange rate products and fixed rate loans, to more complex options and derivatives. Please contact your Relationship Manager to discuss more information about managing these risks."

Example 2

"We draw your attention to the potential risk associated with maintaining an exposure in a foreign currency. Without any hedging agreement in place you are at risk in maintaining such an exposure and may incur a loss in the event of any fluctuation in the values between the currency of the Advance and the Australian dollar. We advise you to seek independent expert advice from a person well conversant in the area of foreign currency borrowings and that you give the matter further consideration before proceeding without any hedging agreement in place."

In its assessment of the 2010 case which prompted this inquiry, FOS considered the bank's use of a general warning text as part of its terms and conditions was not adequate to comply with Clause 21.2 of the Code. FOS considered that Clause 21.2 established a positive obligation on a bank to provide a warning, and as a separate step, advice on risk mitigation strategies.

Whilst some banks may consider provision of a risk warning with the Letter of Offer for a Foreign Currency Loan to be 'prior to the granting of the Foreign Currency Loan', the CCMC recommends written risk warning information be provided to customers prior to the production of the Letter of Offer for the loan facility. The CCMC considers that this will promote both informed decision making, in line with the key objectives under Clause 2.1(b) and better industry practice.

This practice would ensure the consumer is able to make an informed decision about Foreign Currency Loan product and its potential risks.

Recommendation 1

- Provision of Risk Disclosure Brochures at the earliest available opportunity in the loan application process to ensure customers make informed decisions about the risks associated with a foreign currency loan.

Recommendation 2

- Ensure information about available risk mitigation mechanisms is provided in a timely manner.

Recommendation 3

- Consider providing this information online.

Recommendation 4

- Execution of a Risk Disclosure Document prior to the production of a Letter of Offer Document for a Foreign Currency Loan.

Q5. Does the bank have different processes for risk disclosure and mitigation depending on the size and nature of the loan? For example, would you allocate a Relationship Manager to discuss risks and mitigation with the customer if the loan was greater than a certain amount?

Q6. Does the Foreign Currency Loan application process differ subject to whether the customer is an individual or small business? If yes, how does it differ?

The responses to questions 5 and 6 have been consolidated below.

Key Findings

Four banks confirmed that the same process for risk disclosure and mitigation is applied to a Foreign Currency Loan, irrespective of the customer classification or customer segment.

One bank confirmed that business customers with foreign exchange contracts above a certain dollar amount would have the benefit of being advised by specialists that discuss risk mitigation strategies with them. Those with loans under a certain dollar amount are provided with advice in the form of a warning/advice in the Letter of Offer and bank brochures outlining foreign exchange risk and mitigation tools.

One bank confirmed that a Risk Manager is appointed, in addition to a Relationship Manager, should the loan facilities total more than three million dollars and incorporate a Foreign Currency Loan.

Q7. Have you conducted any compliance monitoring activities regarding Foreign Currency Loans in the period 1 January 2011 to 30 June 2011? If yes please provide details of the activities conducted. If no, do you intend to engage in such activity in the next 12 months?

Key Findings

Four banks confirmed they monitor compliance with regulatory requirements (including laws, regulations and adopted Codes) as part of normal supervision / regulatory requirements.

One bank noted that an informal review of Foreign Currency Loan documentation was conducted in February 2011 in response to information provided in FOS Guidelines.

One bank noted that although there was no direct monitoring of Foreign Currency Loans conducted in the sample period, its Compliance Monitoring Program incorporates regular review of information provided by Global Market dealers to clients with foreign exchange rate exposures.

The CCMC held further discussions regarding the level of monitoring conducted in respect of Foreign Currency Loans. Following these discussions, the CCMC has concluded that banks operate effective monitoring arrangements for this class of business.

Q8. Did the bank receive any complaints in respect of Foreign Currency Loans? If yes, please provide details of the type and nature of these complaints.

No complaints were received from customers of the subscribing banks in relation to Foreign Currency Loans in the sample period. This response may be considered indicative of the low number of facilities provided.

Q9. Does the bank plan to alter its Foreign Currency Loan procedures in the near future?

Four banks confirmed they do not intend to alter their Foreign Currency Loan procedures at this time.

One bank confirmed it is currently reviewing its processes regarding Foreign Currency Loan in order to assess the viability and profitability of the loan portfolio.

The remaining bank confirmed it had reviewed processes in 2011 and at that time updated the risk warning within its Foreign Currency Loan Letter of Offer.

E RECOMMENDATIONS

The findings from the Inquiry indicate each bank providing Foreign Currency Loans has systems and procedures in place to assist in meeting obligations under Clause 2.12 of the Code. This includes providing a general warning in writing of the risks arising from exchange rate movements, and information about possible available risk mitigation mechanisms prior to granting a Foreign Currency Loan.

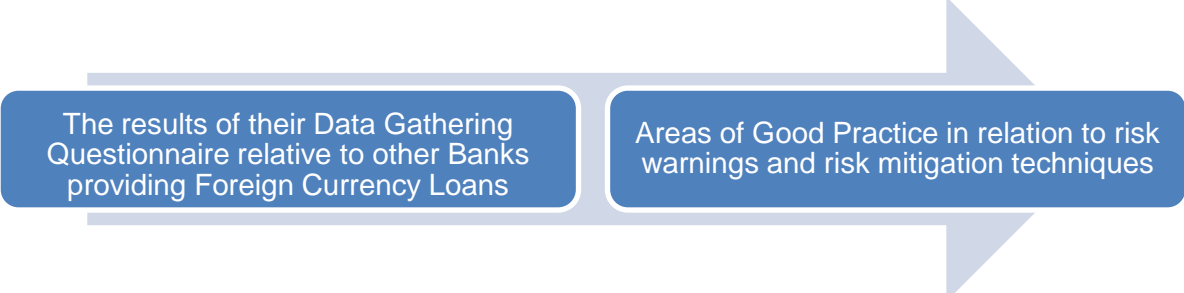
The CCMC has four recommendations for better industry practice in this area.

Recommendations and Rationale

No.	Recommendation	Rationale
1	Provision of Risk Disclosure Brochures at the earliest available opportunity in the loan process (and possibly online).	Allows customers to make an informed decision in relation to the advantages and disadvantages of a Foreign Currency Loan prior to entering into a loan contract, arrange for consultation with appropriate financial experts (if appropriate).
2	Ensure information about available risk mitigation mechanisms is provided in a timely manner.	Encourages customers to consider and instigate any possible risk mitigation mechanism prior to the loan being granted.
3	Consider providing this information online.	Provides customers with access to information regarding risks and risk mitigation prior to arranging the Foreign Currency Loan.
2	Execution of a Risk Disclosure Document prior to the production of a Letter of Offer Document for a Foreign Currency Loan.	Allows customer to make an informed decision about the Foreign Currency Loan product before the bank instructs its documentation area to produce formal loan documents. This may avoid potential confusion when formal loan documents are issued.

F FOLLOW UP

The CCMC issued a draft report to the six banks providing Foreign Currency Loans and discussed the findings and results of the Inquiry. These discussions included:



The results of their Data Gathering Questionnaire relative to other Banks providing Foreign Currency Loans

Areas of Good Practice in relation to risk warnings and risk mitigation techniques

Whilst Foreign Currency Loans represent a small proportion of overall bank lending, the CCMC encourages banks to remain vigilant in the provision of risk warning and information about risk mitigation techniques to their customer base.

The CCMC will incorporate questions relating to the actions taken by banks in respect of this Inquiry in the 2012/13 Annual Compliance statement.

G CONTACT US

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APPENDIX 1: DATA GATHERING QUESTIONNAIRE

1. How many Foreign Currency Loans for individuals and small businesses were provided by the bank in the period 1 January 2011 to 30 June 2011?
2. At what point in the process of a Foreign Currency Loan application does the bank provide risk warnings regarding currency movements?
3. Please provide copies of any documents which include the risk warnings and any other relevant document used by the bank in respect of Financial Currency Loans, such as a Foreign Exchange Advice Brochure.
4. When in the loan process does the bank provide details of the availability of risk mitigation measures for these risks?
5. Does the bank have different processes for risk disclosure and mitigation depending on the size and nature of the loan? For example, would you allocate a Relationship Manager to discuss risks and mitigation with the customer if the loan was greater than a certain amount?
6. Does the Foreign Currency Loan application process differ subject to whether the customer is an individual or small business? If yes, how does it differ?
7. Have you conducted any compliance monitoring activities regarding Foreign Currency Loans in the period 1 January 2011 to 30 June 2011? If yes please provide details of the activities conducted. If no, do you intend to engage in such activity in the next 12 months?
8. Did the bank receive any complaints in respect of Foreign Currency Loans? If yes, please provide details of the type and nature of these complaints.
9. Does the bank plan to alter its Foreign Currency Loan procedures in the near future?

APPENDIX 2: REGULATORY FRAMEWORK

Code of Banking Practice

Clause 2.1(b)(i):

We will promote better informed decisions about our banking services by providing effective disclosure of information.

Clause 2.2:

We will act fairly and reasonably towards you in a consistent and ethical manner. In doing so we will consider your conduct, our conduct and the contract between us.

Clause 21.2:

'Prior to granting a foreign currency loan in Australia, we will provide to you a general warning in writing of the risks arising from exchange rate movements and will inform you of the availability of mechanisms, if they exist, for limiting such risks'.

National Consumer Credit Protection Act 2009

Foreign Currency Loans are also subject to the National Consumer Credit Protection Act 2009 (the Act).

While the Act does not specifically require that risk warnings be provided, Part 2 Division 1 (16) & (17) of the Act provides for the basis of repayment of the loan to be given before the contract is made.

As these repayments may change due to currency movements, a description of the risks will be required to meet these provisions.

ASIC Regulatory Guide 168

Disclosure of the risks associated with foreign currency loans is also supported by ASIC's Regulatory Guide 168.

ASIC Regulatory Guide 168 requires disclosure documents, provided prior to the issue of a financial product, to be worded and presented in a clear, concise and effective manner.

APPENDIX 3: CCMC GUIDANCE 19 JANUARY 2011

Dear Bank Contacts

I hope you are all well and looking forward to the challenges in 2011. I am taking this opportunity to inform you of a recent interpretation of the Code of Banking Practice that may have an impact on the compliance requirements of clause 21.2 of the Code.

Clause 21.2 – states

“Prior to granting a foreign currency loan in Australia, we(the bank) will provide to you(individual or small business customer) a general warning in writing of the risks arising from exchange rate movements and will inform you of the availability of mechanisms, if they exist, for limiting such risks”

In a recent dispute lodged with FOS (now concluded) the Banking and Finance Ombudsman has found that the following obligations arise in respect to clause 21.2 of the Code:

- the bank should provide a general warning in writing to the individual or small business customer, about the risks that arise from exchange rate movements
- that the warning (in writing) should be in a format that is in addition to any warnings that form part of the eventual loan documentation
- that information should be provided to the individual or small business customer about the actual mechanisms for limiting exchange rate movement risk that are available, and
- that the information about the exchange rate risk mitigation strategies should be provided in a time and manner that ensures that the individual or small business customer is aware of the risks and the steps that can be taken to mitigate those risks prior to any formal bank offer for the foreign currency loan facility.

The key issues with the operation of clause 21.2 are:

- ensuring that key information is provided in a format that ensures that the customer is able to make an informed decision as to the suitability of the product, prior entering a contract, and
- that the information and ability to mitigate risks are provided with sufficient time to allow for proper consideration and implementation of any risk mitigation.

While the Committee (CCMC) has yet to consider the advice provided by FOS, you should note that FOS is entitled to form a view as to the application of the industry codes of practice when resolving disputes. Given this recent finding it is likely that any other disputes concerning this clause will be subject to this interpretation.

In order to assess how banks are complying with this clause, we intend to include a number of questions in the Annual Compliance Statement (ACS) for 2010/2011.

What you should do?

There are a number of risks for banks regarding foreign currency loans and the application of this clause; including:

- foreign currency loans are often used for business purposes

- foreign currency loans may involve large sums of money
- exchange rate movements may result in losses
- foreign currency loans may be provided by areas of the bank unfamiliar with the Code (Institutional or Corporate Business areas), and
- failure to adhere to the requirements of the Code may adversely affect the contractual relationship between the banks and the customer.

In order to assess the risks associated with clause 21.2 of the Code, we recommend that you review the current procedures for providing foreign currency loans including:

- the format for disclosing exchange rate risks - ensuring that there is both pre-contractual disclosure and disclosure and acknowledgement via the loan documentation
- the format for advising customers on the risk mitigation options available for foreign currency loans – ensuring that the advice allows sufficient time for the customer to consider and implement the available strategies
- in the situation where the bank is unable to provide any suitable risk mitigation or the customer accepts the risks – consider what procedures are in place to ensure that the customer is aware and has been advised – how is the bank protected, and
- assess what control monitoring is in place to ensure that foreign currency loans comply with the requirement of the Code.

If you have any questions or would like further clarification regarding the recent FOS finding, please let me know.

regards

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