

**Subcommittee to Study Four Items of Subsidiary Legislation
under the Deposit Protection Scheme Ordinance**

Marked-up copy of Schedules 1 and 4 to the Deposit Protection Scheme Ordinance

Chapter:	581	Title:	DEPOSIT PROTECTION SCHEME ORDINANCE	Gazette Number:	L.N. 101 of 2004
Schedule:	1	Heading:	DEPOSITS SPECIFIED FOR PURPOSES OF DEFINITIONS OF “PROTECTED DEPOSIT” AND “RELEVANT DEPOSIT” IN SECTION 2(1) OF THIS ORDINANCE	Version Date:	22/05/2004

[sections 2 & 54]

1. For the purpose of the definition of “protected deposit” in section 2(1) of this Ordinance, the following deposits are specified—

- (a) a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
- (aa) a structured deposit;
- (b) a deposit the repayment of which is secured either in whole or in part on the assets of the Scheme member;
- (c) a bearer instrument;
- (d) a deposit taken by the Scheme member at any of its offices outside Hong Kong;
- (e) a deposit held for the account of the Exchange Fund;
- (f) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person’s share in the deposit;
- (g) a deposit held by a depositor as a bare trustee for an excluded person, or in a client account for an excluded person as the depositor’s client, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person’s share in the deposit;
- (h) a deposit held by a depositor as a trustee for an excluded person only.

2. For the purpose of the definition of “relevant deposit” in section 2(1) of this Ordinance, the following deposits are specified—

- (a) a term deposit where the current term agreed to by the depositor at the most recent

time it was negotiated exceeds 5 years;

(aa) a structured deposit;

- (b) a deposit the repayment of which is secured either in whole or in part on the assets of the Scheme member;
- (c) a bearer instrument;
- (d) a deposit taken by the Scheme member at any of its offices outside Hong Kong;
- (e) a deposit held for the account of the Exchange Fund;
- (f) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit.

2A. For the purposes of this Schedule, a deposit is a structured deposit if –

- (a) the loan of money, or any part of the loan, may be repaid –
 - (i) in a currency that is different from that in which the loan of money was made; or
 - (ii) in the form of any property other than money;
- (b) the interest on the loan of money, or the premium at which the loan of money is repayable, or any part of the interest or premium, may be paid in a currency that is different from that in which the loan of money was made;
- (c) any amount of the loan of money to be repaid is determined by reference to –
 - (i) the price or value of a financial product, commodity, non-local currency or property;
 - (ii) the level of an index;
 - (iii) the fact that a relevant figure –
 - (A) is above, below or equal to a specified level; or
 - (B) is within or outside a specified range;
 - (iv) the difference calculated by subtracting a relevant figure from a specified percentage;
 - (v) the result of a mathematical operation that involves more than one relevant figure;
or
 - (vi) the occurrence or non-occurrence of an event in relation to a person other than the depositor who holds, or the Scheme member that takes, the deposit; or
- (d) any amount of the interest on the loan of money, or of the premium at which the loan of money is repayable, is determined by reference to –
 - (i) the price or value of a financial product, commodity, non-local currency or property;
 - (ii) the level of an index;
 - (iii) the fact that a relevant figure –
 - (A) is above, below or equal to a specified level; or
 - (B) is within or outside a specified range;
 - (iv) the difference calculated by subtracting a relevant figure from a specified percentage;
 - (v) the result of a mathematical operation that involves more than one relevant figure;
or
 - (vi) the occurrence or non-occurrence of an event in relation to a person other than the

depositor who holds, or the Scheme member that takes, the deposit.

3. In this Schedule—

“commodity” (商品) means any item which is listed in the Schedule to the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);

“excluded person” (豁除人士), in relation to a deposit maintained with a Scheme member, means—

- (a) a related company of the Scheme member;
- (b) a multilateral development bank as defined in paragraph 1 of the Third Schedule to the Banking Ordinance (Cap 155);
- (c) an authorized institution;
- (d) a foreign bank; or
- (e) in relation—
 - (i) to the definition of “protected deposit” in section 2(1) of this Ordinance for the purposes of Part 5 of this Ordinance, an officer of the Scheme member or its related company on—
 - (A) the date immediately preceding the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap 155) is appointed in respect of the Scheme member under section 52 of that Ordinance; or
 - (B) the date on which the petition for the winding up of the Scheme member is presented,whichever is the earlier;
 - (ii) to the definition of “protected deposit” in section 2(1) of this Ordinance for any other purpose ~~and to the definition of “relevant deposit” in that section~~, an officer of the Scheme member or its related company;

“financial product” (金融產品) means any securities, futures contract, collective investment scheme or leveraged foreign exchange contract within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

“foreign bank” (外地銀行) means a company that—

- (a) is incorporated outside Hong Kong;
- (b) is not an authorized institution; and
- (c) may, in or outside the place where it is incorporated, lawfully take deposits from the general public (whether or not on current account), or is authorized or recognized as a bank in that place;

“non-excluded person” (非豁除人士) means—

- (a) in relation to the definition of “protected deposit” in section 2(1) of this Ordinance for the purposes of Part 5 of this Ordinance, a person who is not an excluded person within the meaning of paragraph (a), (b), (c), (d) or (e)(i) of the definition of “excluded person”;
- (b) in relation to the definition of “protected deposit” in section 2(1) of this Ordinance for any other purpose ~~and to the definition of “relevant deposit” in that section~~, a person who is not an excluded person within the meaning of paragraph (a), (b), (c), (d) or (e)(ii) of the definition of “excluded person”;
- (c) in relation to the definition of “relevant deposit” in section 2(1) of this Ordinance, a

person who is not an excluded person within the meaning of paragraph (a), (b), (c) or (d) of the definition of “excluded person”;

“officer” (人員)—

- (a) in relation to a Scheme member or its related company that is an authorized institution, means—
 - (i) a director of the Scheme member or the company;
 - (ii) a chief executive of the Scheme member or the company;
 - (iii) a controller, within the meaning of section 2(1) of the Banking Ordinance (Cap 155), of the Scheme member or the company; or
 - (iv) a manager, within the meaning of that section, of the Scheme member or the company;
- (b) in relation to a Scheme member’s related company that is not an authorized institution, has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap 32);

“related company” (關連公司), in relation to a Scheme member, means—

- (a) a holding company of the Scheme member;
- (b) a subsidiary of the holding company; or
- (c) a subsidiary of the Scheme member;

“relevant figure” (有關數字) means –

- (a) a rate of interest, quoted or published from time to time, that is offered by a person or government on a loan of money that –
 - (i) the person or government makes to, or proposes to make to, another person or government; or
 - (ii) the person or government raises from, or proposes to raise from, another person or government;
- (b) a rate of interest, quoted or published from time to time, that is offered by a person or government, for entering into a swap contract with another person or government, as the rate of interest at which payments to be made under that contract are to be calculated;
- (c) a rate of return, quoted or published from time to time, on an investment of moneys made by a person or government; or
- (d) a figure, quoted or published from time to time, that represents the result of a mathematical operation that involves more than one rate of interest or return mentioned in paragraph (a), (b) or (c);

“swap contract” (掉期合約) means a contract made between two parties whereby each party agrees to make payments, calculated at a rate of interest on a specified amount of money, to the other party in a particular period.

4. For the purposes of sections 1(f) and (g) and 2(f), if a deposit is held by more than one person in their own right or held for more than one person, each of those persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the Board.

Chapter:	581	Title:	DEPOSIT PROTECTION SCHEME ORDINANCE	Gazette Number:
Schedule:	4	Heading:	CONTRIBUTIONS TO FUND	Version Date:

Remarks:
not yet in operation

[sections 2, 15 & 54]

1. Interpretation

(1) In this Schedule, unless the context otherwise requires—

“amount of relevant deposits” (有關存款款額), in relation to a Scheme member, does not, subject to subsection (2), include—

(a) where—

- (i) the amount of one or more relevant deposits held by one person, as a depositor, with the Scheme member in his own right exceeds \$100000;
- (ii) the amount of one or more relevant deposits held by a depositor with the Scheme member as a bare trustee under one bare trust exceeds \$100000;
- (iii) the amount of the relevant deposit held by a depositor with the Scheme member in one client account exceeds \$100000; or
- (iv) the amount of one or more relevant deposits held by a depositor with the Scheme member as a trustee under one trust exceeds \$100000, the amount in excess of \$100000; or

(b) any amount of interest accrued on relevant deposits;

“build-up levy” (建立期徵費) means the build-up levy payable by a Scheme member under section 3(4);

“expected loss levy” (預期損失徵費) means the expected loss levy payable by a Scheme member under section 4(2);

“specified date” (指明日期), in relation to a year, means —

(a) 20 October of that year; or

(b) where 20 October of that year is a general holiday, the day (not being a general holiday) immediately preceding that date;

“start-up year” (啓動年) means the year in which this Schedule commences;

“surcharge” (附加費) means the surcharge payable by a Scheme member under section 5(2);

“target fund size” (基金目標金額), in relation to a year, means the size of the Fund that the Board seeks to achieve and maintain for that year.

(2) In the definition of “amount of relevant deposits”—

(a) a reference to a relevant deposit includes a portion of the deposit;

(b) for the purposes of paragraph (a)(i) of that definition, if a depositor consists of 2 or more persons—

(i) subject to subparagraph (ii), each of the persons is deemed to have an equal share

- in the deposit unless the contrary is proved to the satisfaction of the Board;
- (ii) in the case where the persons carry on business in partnership, those persons are a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership; and
 - (c) for the purposes of paragraph (a)(ii) and (iv) of that definition, if the depositor consists of 2 or more persons, those persons are a single and continuing body of persons as distinct from the persons who may from time to time be the bare trustees or trustees.
- (3) For the purposes of this Schedule, the target fund size is reached in a particular year if the sum of—
- (a) the aggregate amount of contributions payable by all Scheme members for that particular year; and
 - (b) the balance of the Fund as at ~~20 October~~ the specified date of the immediately preceding year,
- is equal to or greater than the target fund size for that particular year.

2. Calculation of target fund size and balance of Fund

(1) For the purposes of this Schedule, the target fund size for any particular year is the specified percentage of the aggregate of the amount of relevant deposits maintained with each of the Scheme members as at ~~20 October~~ the specified date of the immediately preceding year.

(2) For the purposes of this Schedule, the balance of the Fund as at ~~20 October~~ the specified date of any year is the amount by which the total assets of the Fund exceed its total liabilities as shown in a balance sheet of the Fund, as at that date, prepared by the Board.

(3) In this section, “specified percentage” (指明百分比) means 0.3%.

3. Build-up levy

(1) This section applies to any year up to and including the year in which the target fund size has been reached for the first time after the commencement of this Schedule.

(2) If, after the year in which the target fund size has been reached for the first time after the commencement of this Schedule, the target fund size for a particular year becomes, as a result of a specified amendment, greater than the balance of the Fund as at ~~20 October~~ the specified date of the immediately preceding year, this section also applies to—

(a) that particular year; and

(b) any subsequent year up to and including the year in which the target fund size is reached for the first time after the commencement of that specified amendment.

(3) If, after the year in which the target fund size has been reached for the first time after the commencement of a specified amendment, the target fund size for a particular year becomes, as a result of another specified amendment, greater than the balance of the Fund as at ~~20 October~~ the specified date of the immediately preceding year, this section also applies to—

(a) that particular year; and

(b) any subsequent year up to and including the year in which the target fund size is reached for the first time after the commencement of that other specified amendment.

(4) A build-up levy is payable by a Scheme member for any year to which this section applies.

(5) Subject to subsections (6) and (7) and section 6, the amount of build-up levy payable by a

Scheme member for any year (other than the start-up year) is the sum calculated by multiplying the amount of relevant deposits maintained with the Scheme member as at ~~20 October~~ the specified date of the immediately preceding year by the percentage specified in column 2 of the following Table opposite the MA supervisory rating of the Scheme member specified in column 1 of that Table.

TABLE

Column 1 MA supervisory rating	Column 2 Percentage
1	0.05%
2	0.08%
3	0.11%
4 or 5	0.14%

(5A) Subject to section 6, the amount of build-up levy payable by a Scheme member for the start-up year is such portion of the amount of build-up levy that would have been payable by the Scheme member for the start-up year if that Scheme member had been a member of the Scheme during the whole of the year that the number of days during which this Schedule is in operation in the start-up year bears to 365.

(5B) That amount of build-up levy that would have been payable for the start-up year is the sum calculated by multiplying the amount of relevant deposits maintained with the Scheme member as at –

- (a) if the Scheme member becomes a member of the Scheme on or before the specified date in the year immediately preceding the start-up year, that specified date; or
- (b) if the Scheme member becomes a member of the Scheme after that specified date, the date on which it becomes a member of the Scheme,

by the percentage specified in column 2 of the Table set out in subsection (5) opposite the MA supervisory rating of the Scheme member specified in column 1 of that Table.

(6) If the amount by which the target fund size for a particular year exceeds the balance of the Fund as at ~~20 October~~ the specified date of the immediately preceding year is smaller than the aggregate amount of build-up levies that would, but for this subsection, have been payable by all Scheme members for that particular year in accordance with subsection (5), the amount of build-up levy payable by a Scheme member for that particular year is such portion of the amount of build-up levy that would have been payable by the Scheme member for that year in accordance with subsection (5) that such amount of excess bears to such aggregate amount.

(7) If the target fund size for a particular year does not exceed the balance of the Fund as at ~~20 October~~ the specified date of the immediately preceding year, no build-up levy is payable for that particular year.

(8) For the avoidance of doubt, the percentage specified in column 2 of the Table in subsection (5) may be revised by way of an amendment to this section before, during or after the year in which the target fund size is reached for the first time after the commencement of this Schedule.

(9) In this section, “specified amendment” (指明的修訂) means an amendment to the definition of “specified percentage” in section 2(3).

4. **Expected loss levy**

(1) This section applies to any year after the year in which the target fund size has been reached for the first time after the commencement of this Schedule, except a year to which section 3 applies by virtue of subsection (2) or (3) of that section.

(2) An expected loss levy is payable by a Scheme member for any year to which this section applies.

(3) Subject to section 6, the amount of expected loss levy payable by a Scheme member for any year is the sum calculated by multiplying the amount of relevant deposits maintained with the Scheme member as at ~~20 October~~ the specified date of the immediately preceding year by the percentage specified in column 2 of the following Table opposite the MA supervisory rating of the Scheme member specified in column 1 of that Table.

TABLE

Column 1 MA supervisory rating	Column 2 Percentage
1	0.0075%
2	0.01%
3	0.015%
4 or 5	0.02%

(4) For the avoidance of doubt, the percentage specified in column 2 of the Table in subsection (3) may be revised by way of an amendment to this section before, during or after the year in which the target fund size is reached for the first time after the commencement of this Schedule.

5. **Surcharge**

(1) This section applies to any year—

(a) to which section 4 applies; and

(b) 70% of the target fund size for which is greater than the balance of the Fund as at ~~20 October~~ the specified date of the immediately preceding year.

(2) A surcharge is payable by a Scheme member for any year to which this section applies.

(3) Subject to section 6, the amount of surcharge payable by a Scheme member for any year is a specified portion of the amount of build-up levy that would have been payable by the Scheme member for that year in accordance with section 3(5) as if section 3 applied to that year.

(4) The aggregate amount of surcharges payable by all Scheme members for any year is—

(a) the difference between—

(i) the aggregate amount of build-up levies that would have been payable by all Scheme members for that year in accordance with section 3(5) as if section 3 applied to that year; and

(ii) the aggregate amount of expected loss levies payable by all Scheme members for that year in accordance with section 4(3); or

(b) 30% of the amount by which the target fund size for that year exceeds the balance of the Fund as at ~~20 October~~ the specified date of the immediately preceding year, whichever is the lower.

(5) In this section, “specified portion” (指明部分), in relation to the amount of build-up levy that would have been payable for a year, means the portion that the aggregate amount of surcharges payable by all Scheme members for that year, calculated in accordance with subsection (4), bears to the aggregate amount of build-up levies that would have been payable by all Scheme members for that year, calculated in accordance with subsection (4)(a)(i).

6. Calculation of contribution for new Scheme members

(1A) This section applies to a Scheme member that becomes a member of the Scheme by virtue of section 12(3) of this Ordinance on or after the commencement of this Schedule.

(1) The amount of contribution payable by a Scheme member for the year in which it becomes a member of the Scheme ~~by virtue of section 12(3) of this Ordinance~~ —

- (a) shall be calculated on the basis of the amount of relevant deposits maintained with the Scheme member as at the date it becomes a member of the Scheme ~~but not 20 October of the immediately preceding year~~; and
- (b) is that proportion of the amount of projected full-year contribution for that year that the number of days during which the Scheme member is a member of the Scheme in that year bears to 365.

(2) If a Scheme member becomes a member of the Scheme ~~by virtue of section 12(3) of this Ordinance after 20 October~~ after the specified date in any particular year, the amount of contribution payable for the subsequent year shall be calculated on the basis of the amount of relevant deposits maintained with the Scheme member as at the date it becomes a member of the Scheme ~~but not 20 October of that particular year~~.

(3) In this section, “projected full-year contribution” (預計全年供款), in relation to a year in which a Scheme member becomes a member of the Scheme ~~by virtue of section 12(3) of this Ordinance~~, means the amount of contribution that would have been payable by the Scheme member if that Scheme member had been a member of the Scheme during the whole of that year.

7. Minimum amount of contribution

Notwithstanding anything in this Schedule, if the amount of contribution payable by a Scheme member for any year is less than \$50000, a minimum contribution equal in amount to that proportion of \$50000 ~~that the number of days during which the Scheme member is a member of the Scheme in that year bears to 365~~ is payable by the Scheme member for that year that —

(a) in the case of the start-up year —

- (i) where the Scheme member becomes a member of the Scheme before the commencement of this Schedule, the number of days during which this Schedule is in operation in that year bears to 365;
- (ii) where the Scheme member becomes a member of the Scheme on or after the commencement of this Schedule, the number of days during which the Scheme member is a member of the Scheme in that year bears to 365; or

(b) in the case of any other year, the number of days during which the Scheme member is a member of the Scheme in that year bears to 365,
is payable by the Scheme member for that year.

8. Rebate

(1) A rebate shall be made by the Board in any year if 115% of the target fund size for that year is smaller than the balance of the Fund as at ~~20 October~~ the specified date of the immediately preceding year.

(2) For any year in which a rebate is required to be made by the Board, the amount of rebate payable to a Scheme member is such portion of the aggregate amount of rebates payable to all Scheme members in that year, calculated in accordance with subsection (3), that the amount of net contribution by the Scheme member during the relevant period bears to the aggregate of the amount of net contribution by each of the Scheme members during the same period.

(3) The aggregate amount of rebates payable to all Scheme members in any particular year is 30% of the amount by which the balance of the Fund as at ~~20 October~~ the specified date of the immediately preceding year exceeds the target fund size for that particular year.

(4) In this section—

“amount of net contribution” (供款淨額), in relation to a Scheme member during a period, means the amount of contribution paid by the Scheme member during the period less the amount of rebate received by the Scheme member during that period;

“relevant period” (有關期間) means the period of 10 years immediately preceding the year in which the rebate is required to be made by the Board or the period since the commencement of this Schedule, whichever is the shorter.

9. Refund of contribution

(1) A proportion of the contribution paid by a Scheme member for the year in which it ceases to be a member of the Scheme shall be refunded to that Scheme member.

(2) The amount to be refunded is that proportion of the contribution that the number of days ~~during which the Scheme member is not a member of the Scheme in that year bears to 365,~~ within the relevant period in the year bears to the number of days within the contribution period in that year.

(3) In this section –

“contribution period” (供款期間) –

(a) in relation to the start-up year –

(i) in the case where the Scheme member becomes a member of the Scheme before the commencement of this Schedule, means the period during which this Schedule is in operation in that year; or

(ii) in the case where the Scheme member becomes a member of the Scheme on or after the commencement of this Schedule, means the period that begins on the date on which the Scheme member becomes a member of the Scheme and expires on 31 December of that year;

(b) in relation to any other year –

(i) in the case where the Scheme member is a member of the Scheme on 1 January of that year, means the period that begins on 1 January and expires on 31 December of that year; or

(ii) in the case where the Scheme member becomes a member of the Scheme after 1 January of that year, means the period that begins on the date on which the Scheme member becomes a member of the Scheme and expires on 31 December of that year;

“relevant period” (有關期間), in relation to a year, means the period that begins on the date on which a Scheme member ceases to be a member of the Scheme and expires on 31 December of that year.

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