

立法會
Legislative Council

LC Paper No. CB(1)2747/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/BC/5/09/2

Bills Committee on Deposit Protection Scheme (Amendment) Bill 2010

Third meeting on
Monday, 7 June 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Fred LI Wah-ming, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hong CHIM Pui-chung

Public officers : Ms Meena DATWANI
Attending Executive Director (Banking Conduct)
Hong Kong Monetary Authority

Mr Colin POU
Head (Deposit Protection Scheme)
Hong Kong Monetary Authority

Mr Adrian LAM
Assistant Secretary for Financial Services and the Treasury
(Financial Services)

Ms Phyllis KO
Senior Assistant Law Draftsman
Department of Justice

Miss Mandy NG
Government Counsel
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Fred PANG
Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)8

I Confirmation of minutes

(LC Paper No. CB(1)2104/09-10 — Minutes of meeting on 6 May 2010)

The minutes of the meeting held on 6 May 2010 were confirmed.

II Meeting with the Administration

Follow-up to issues raised at the meeting on 20 May 2010

(LC Paper No. CB(1)2135/09-10(01) — Letter from Assistant Legal Adviser to the Administration dated 24 May 2010

LC Paper No. CB(1)2135/09-10(02) — Administration's response to the letter from Assistant Legal Adviser dated 1 June 2010)

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)575/09-10 — The Bill

LC Paper No. CB(1)1807/09-10(01) — Marked-up copy of the Bill prepared by the Legal Service Division

LC Paper No. CB(1)1807/09-10(02) — Letter from Assistant Legal Adviser to the Administration dated 19 April 2010 on Deposit Protection Scheme (Amendment) Bill 2010

LC Paper No. CB(1)1807/09-10(03) — Administration's response to the letter from Assistant Legal Adviser dated 21 April 2010 on Deposit Protection Scheme (Amendment) Bill 2010)

Other relevant papers previously issued

B9/2/2C — The Legislative Council Brief issued by the Financial Services and the Treasury Bureau

LC Paper No. CB(1)1842/09-10(01) — Administration's paper on Deposit Protection Scheme (Amendment) Bill 2010 (Powerpoint presentation materials)

2. The Committee deliberated (Index of proceedings attached at **Appendix**).

Admin

Follow-up actions to be taken by the Administration

3. Noting that the Chairman or an appointed member of the Hong Kong Deposit Protection Board (the Board) was to be regarded as being present at a meeting of the Board if he did not attend the meeting in person but participated in the meeting by any of the ways specified in the proposed section 5 of Schedule 2 to the Deposit Protection Scheme Ordinance (Cap. 581) (DPSO), Ms Miriam LAU requested the Administration to consider whether "absence from Hong Kong" should still be included in section 2(4) and (5) of Schedule 2 to the DPSO as a reason for being unable to perform the functions of his office as Chairman or appointed member.

(Post-meeting note: The Administration's response on the above matter was issued to members vide LC Paper No. CB(1)2233/09-10(01) on 11 June 2010.)

III Any other business

Legislative timetable

4. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. The Administration proposed to resume the Second Reading debate on the Bill on 30 June 2010. Members did not raise any objection. The Chairman said that the Bills Committee would report its deliberations to the House Committee on 18 June 2010.

5. There being no other business, the meeting ended at 3:30 pm.

Council Business Division 1
Legislative Council Secretariat
20 August 2010

**Proceedings of the
Bills Committee on Deposit Protection Scheme (Amendment) Bill 2010
Third meeting on Monday, 7 June 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000015 – 000155	Chairman	Confirmation of minutes of meeting on 6 May 2010 (LC Paper No. CB(1)2104/09-10) Opening remarks	
Meeting with the Administration			
000156 – 001207	Administration Chairman ALA3	Briefing by the Administration on paper LC Paper No. CB(1)2135/09-10(02)	
Clause-by-clause examination of the Bill			
001208 – 001827	Chairman Administration ALA3	<p><u>Clause 7 – Section 37 amended (Recovery of payment by Board)</u></p> <p><u>Clause 8 – Section 38 amended (Subrogation)</u></p> <p>Members raised no question on clauses 7 and 8.</p> <p><u>Clause 9 – Section 48 amended (Power of Board to obtain information)</u></p> <p>In response to ALA3's enquiry on whether "those relevant deposits and liabilities" in the proposed section 48(2)(c) should be changed to "those relevant deposits and relevant liabilities" as "relevant liabilities" was a defined term under the proposed section 1 of Schedule 4, the Administration advised that the change was not necessary. It would be clear from the context that those liabilities referred to in section 48(2)(c) were "relevant liabilities" within the meaning of section 1 of Schedule 4.</p>	
001829 – 002451	Administration Ms Miriam LAU	<p><u>Clause 10 – Section 51 amended (Power of Board to make rules)</u></p> <p>In reply to Ms Miriam LAU's enquiry about the meaning of "specified circumstances" in the proposed section 51(1), the Administration advised that "specified circumstances" referred to the circumstances in which a member of the Deposit Protection Scheme (the Scheme) was required to act according to the rules made by the Board under section 51(1), such as the need to make known to</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>the public about its Scheme membership status. The "specified circumstances" were already included in subsidiary legislation, that was, the Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (Cap. 581A).</p> <p>Ms Miriam LAU enquired whether with the enactment of the proposed section 51(1)(da)(ii), it would be necessary to amend Cap. 581A to include the requirement on a Scheme member to obtain acknowledgment from a depositor. The Administration advised that the requirement was already included in the existing Cap. 581A. The proposed section 51(1)(da)(ii) sought to specify in the principal legislation the power of the Board to impose such a requirement on Scheme members.</p>	
002452 – 003033	Administration The Chairman Mr Tommy CHEUNG	<p><u>Clause 11 – Section 56 added</u></p> <p><i>56. Transitional provisions in relation to Deposit Protection Scheme (Amendment) Ordinance 2010</i></p> <p>Mr Tommy CHEUNG enquired about the application of the proposed section 56(3) on an existing product named "structured deposit" upon its expiry and renewal. The Administration advised that, according to section 56(3), the restrictions to be made under the proposed section 51(1)(db) would apply only to new financial products. The restrictions would not have effect on the financial products that were being described or represented as "structured deposits" immediately before the commencement of these restrictions. After enactment of the Bill, these "structured deposits" if renewed upon the expiry of their current maturity period would be regarded as new financial products and would be subject to the restrictions to be made under section 51(1)(db).</p>	
003034 – 004232	Administration Chairman Ms Miriam LAU	<p><u>Clause 12 – Schedule 2 amended (Provisions relating to Board)</u></p> <p>Noting that the Board's Chairman or an appointed member was regarded as being present at a meeting of the Board if he did not attend the meeting in person but participated in the meeting by any of the ways specified in the proposed section 5 of Schedule 2, Ms Miriam LAU queried whether the absence of the Board's Chairman or an appointed</p>	The Administration to take action.

Time Marker	Speaker	Subject(s)	Action Required
		<p>member from Hong Kong should still be included in the proposed section 2(4) and (5) of Schedule 2 as a reason for being unable to perform the functions of his office as Chairman or member and, therefore, appointing a temporary Chairman or temporary member in his place.</p> <p>The Administration advised that a temporary Chairman or temporary member would only be appointed during the incapacity of the Board's Chairman or an appointed member. The expression "due to absence from Hong Kong" was just intended to explain one of the possible causes for the Chairman's or appointed member's incapacity.</p> <p>Ms Miriam LAU opined that, as the incapacity of the Board's Chairman or an appointed member was the key factor for determining whether he was able to perform the functions, the Administration should consider replacing "is, due to absence from Hong Kong or for any other reason, unable" with "is, for any reason, unable". At the request of the Chairman, the Administration would further consider the views of Ms LAU.</p>	
004233 – 005004	Administration	<p><u>Clause 13 – Schedule 4 amended (Contributions to Fund)</u></p> <p>Part 3</p> <p>Consequential and Related Amendments</p> <p><u>Clause 14 – Consequential and related amendments</u></p> <p>Members raised no question on clauses 13 and 14.</p>	
005005 – 010144	Chairman Administration Ms Miriam LAU ALA3	<p>The Administration's briefing on the proposed Committee Stage Amendments (LC Paper No. CB(1)1981/09-10(01) and CB(1)2211/09-10(01)).</p> <p>ALA3 pointed out that the proposed Committee Stage amendment (CSA) to Clause 6 did not spell out any objective criteria that the Board would follow when determining differential interim payments for different depositors or classes of depositors, but would give the Board full discretion to decide not only the amount of the interim payment but also which criteria were relevant. Members might wish to consider whether it was</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>appropriate to give the Board the full discretion to make such decisions which, according to the Administration, would not be subject to review by the Deposit Protection Appeals Tribunal under section 41. ALA3 also suggested that Clause 6 could be simplified by replacing "having regard to the matters that the Board thinks relevant in the circumstances," with "having regard to all relevant matters".</p> <p>The Administration advised that the purpose of the proposed CSA was to clearly specify that it was for the Board to decide the appropriate criteria for making differential interim payments to different depositors or different classes of depositors and the amount of interim payments concerned. The Board was supposed to exercise its power in a reasonable way.</p>	
010145 – 010315	Chairman Administration	Legislative timetable	