



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

CB(1)1807/09-10(02)

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Miss Natalie Li
Principal Assistant Secretary for Financial Services and the
Treasury (Financial Services)
Financial Services and the Treasury Bureau
18/F Tower I, Admiralty Centre
18 Harcourt Road
Hong Kong

19 April 2010

BY FAX
Fax No. : 2527 0790

Dear Miss Li,

Deposit Protection Scheme (Amendment) Bill 2010

I am scrutinizing the legal and drafting aspects of the Bill and should be grateful if you would clarify the following matters:

Clause 10(1) – proposed section 51(1)(d)

The proposed section 51(1)(d) seeks to require public disclosure by a Scheme member not only of the fact that *it is* a member of the Scheme, but also that *it will cease to be* a member of the Scheme. Please consider whether there will be any circumstances where the Board may need to require a company which *has ceased to be* a member of the Scheme (e.g. because it has ceased to be a bank or its banking licence has been revoked under the Banking Ordinance (Cap. 155)) to publicize that fact after the cessation, and if so, whether it will be necessary for the rules to be promulgated under the proposed section 51(1)(d) to provide for the same.

Clause 11 – new section 56

In the new section 56(3), please explain the rationale for singling out structured deposits for the purposes of the section, considering that the proposed section 51(1)(db) seeks to give the Board general powers to impose restrictions relating to the descriptions or representations of *any* financial product (which may or may not be described or represented as a structured deposit).

Schedule – consequential amendments to section 265 of the Companies Ordinance (Cap. 32)

The new section 265(11) of the Companies Ordinance (Cap. 32) provides that the new limit of \$500,000 "applies in the case of a winding up *where the relevant date occurred before the commencement of that Schedule* but the specified event within the meaning of section 22(1) of the Deposit Protection Scheme Ordinance (Cap. 581) occurs on or after the commencement of that Schedule." (emphasis added) If the intention is that the increased limit of \$500,000 is to apply to a winding up where a specified event within the meaning of section 22(1) of Cap. 581 occurs on or after the commencement of the Schedule (notwithstanding that the relevant date may have occurred before the commencement of that Schedule), please consider improving the drafting of the proposed section 265(11) to make that intention clear. As presently drafted, the section is open to the interpretation that the increased limit would apply to a preferential payment under section 265 of Cap. 32 only if both of the following conditions are satisfied:

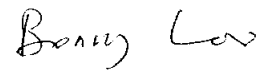
- (a) the relevant date of the winding up occurred before the commencement of the Schedule; and
- (b) the specified event occurs on or after the commencement of the Schedule.

Chinese text

- (a) In clause 4(5), in the proposed section 27(4)(c) of Cap. 581, the expression "contingent liabilities" is referred to in the Chinese text as "或有負債", whereas the term "liabilities" (in the proposed section 27(4)(d)) is referred to as "債務". Please explain why different Chinese terms, "負債" and "債務", are used to refer to the same English word "liabilities". You may wish to note that "或有債務" is used as the Chinese text of "contingent liabilities" in section 4(2) of the Deposit Protection Scheme (Asset Maintenance) Rules (Cap. 581 sub. leg. C). Should the same Chinese text be used for the sake of consistency?
- (b) In clause 10(2), in the proposed section 51(1)(da)(i), the expression "is or is not" is referred to in the Chinese text as "是或不是". Is it not clearer and simpler to use "是否"?

I would appreciate it if you could let me have the Administration's reply in both languages as soon as possible.

Yours sincerely,

A handwritten signature in cursive script that reads "Bonny Loo".

(Bonny LOO)
Assistant Legal Adviser

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LA
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