

香港特別行政區政府
 財經事務及庫務局
 財經事務科
 香港夏慤道十八號
 海富中心第一座十八樓



FINANCIAL SERVICES BRANCH
 FINANCIAL SERVICES AND
 THE TREASURY BUREAU
 GOVERNMENT OF THE HONG KONG
 SPECIAL ADMINISTRATIVE REGION

18TH FLOOR
 ADMIRALTY CENTRE TOWER 1
 18 HAR COURT ROAD
 HONG KONG

電話 TEL.: 2529 0121

圖文傳真 FAX.: 2527 0790

本函檔號 OUR REF.:

來函檔號 YOUR REF.:

URGENT

21 April 2010

CB(1)1807/09-10(03)

Mr Bonny Loo
 Assistant Legal Adviser
 Legislative Council Secretariat (Legal Service Division)
 Legislative Council Building
 8 Jackson Road, Central
 Hong Kong

Dear Mr Loo,

Deposit Protection Scheme (Amendment) Bill 2010

Thank you for your letter of 19 April 2010, requesting us to clarify a few matters regarding the Deposit Protection Scheme (Amendment) Bill 2010 (the "Bill"). Please find below our reply which has been prepared in consultation with the Law Drafting Division of the Department of Justice and the Hong Kong Deposit Protection Board ("HKDPB").

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

At this stage, HKDPB does not foresee any circumstances under which it will require a company that has ceased to be a member of the Deposit Protection Scheme ("DPS") to publicize that fact after the cessation.

Clause 11 - new section 56

"Structured deposits" is a category of deposits excluded from the protection of the DPS under section 1(aa) of Schedule 1 to the Deposit Protection Scheme Ordinance (Cap. 581) ("DPSO"). This

category of deposits is defined in section 2A of the same Schedule. When HKDPB reviewed the DPS last year, it was noted that, in the absence of any restrictions on the use of the term “structured deposit”, some banks had named their protected deposits as structured deposits. Some members of the public, including the Consumer Council, commented that this phenomenon might cause confusion. HKDPB therefore decided to impose restrictions on the use of the term by making new rules (under the new section 51(1)(db)). Specifically, the rules will require that only financial products meeting the definition of “structured deposit” in Schedule 1 to the DPSO can be named as structured deposits. Singling out structured deposits in the new section 56(3) mainly serves to remove any uncertainties on whether the new rules will apply to structured deposits in existence when the rules commence operation. Since the amount of protected deposits in the market being named as a structured deposit is small and they will gradually mature over time, HKDPB considers it not necessary to apply the new rules to structured deposits already in existence.

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

The proposed section 265(11) of the Companies Ordinance added by section 2(8) of the Schedule to the Bill is a transitional provision which only seeks to clarify the position where a winding up occurs before the commencement of the Bill but compensation is payable under the DPSO on or after the commencement. To avoid doubt, we suggest that section 2(8) of the Schedule be revised to read as follows:

“In the case of a winding up where the relevant date has occurred before the commencement of the Schedule to the Deposit Protection Scheme (Amendment) Ordinance 2010 (of 2010), that Schedule applies in relation to that winding up if 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.”

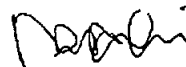
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Chinese text

- (a) “債務” and “或有負債” were used respectively for “liabilities” and “contingent liabilities” following section 27(4)(b). That said, we are agreeable to changing all the “或有負債” including the one in section 27 to “或有債務” for consistency’s sake.
- (b) In this context, “是或不是” is preferred to “是否” in placing the emphasis on whether the deposit is classified as a protected one or otherwise. The expression is common in legislation relating to the making of disclosures and statements whether something falls within a certain category.

Please feel free to contact me at 2529-0121 should you have any further questions on the above.

Yours sincerely,



(Miss Natalie Li)
for Secretary for Financial Services and the Treasury

c.c.

Law Drafting Division/DoJ (Attn: Ms Phyllis Ko, SALD)
(Attn: Miss Mandy Ng, GC)
HKDPB (Attn: Mr Colin Pou)