



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

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24 May 2010

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

BY FAX
Fax No. : 2527 0790

Dear Miss Li,

Deposit Protection Scheme (Amendment) Bill 2010

We refer to the Bills Committee meeting held on 20 May 2010 and should be grateful if you would clarify the following matters:

Whether decisions or determinations made under the proposed sections 27(4)(c) and (d) and 36(2) are reviewable

- (a) The proposed section 27(4)(c) and (d) of Cap. 581 seeks to empower the Hong Kong Deposit Protection Board (the Board) to determine under specified circumstances the value of annuities and future and contingent liabilities and the amount of interest accrued on deposits or liabilities by making reasonable and appropriate estimates in order to expedite the payment of compensation to depositors. The proposed section 36(2) seeks to empower the Board to make interim payments of different amounts to different depositors or different classes of depositors. Please clarify whether it is intended that the Board's determinations or decisions under the proposed sections are subject to review by the Deposit Protection Appeals Tribunal (the Tribunal) under section 41(1) of Cap. 581, i.e. whether they are the Board's decisions as to a person's entitlement to compensation under Cap. 581 and the amount of such compensation referred to in section 32(5) of Cap. 581.
- (b) If the policy intent is to allow the Tribunal to review the Board's decisions under the proposed section 36(2) and the proposed section 27(4)(c) and (d), please consider whether the term "the amount of compensation to which he

is entitled" (有權獲得的補償款額) under section 32(5)(b) should be revised to reflect this intention.

- (c) In respect of the Board's determination under the proposed section 27(4)(c) and (d), we note that the proposed section 37(5) describes the amount of compensation paid as a result of an estimate made under section 27(4)(c) or (d) as "the paid amount" (已支付款額), whereas the amount of compensation that would have been paid to the depositor if the estimate had not been made is described as "the entitled amount" (有權獲得的款額). Please consider whether these descriptions may give rise to an argument that since an amount of compensation paid by the Board as a result of an estimate made under the proposed section 27(4)(c) and (d) is not an "entitled amount" (有權獲得的款額) under the proposed section 37(5), it is also not an "amount of compensation to which he is entitled" (有權獲得的補償款額) within the meaning of section 32(5)(b), and consequently such estimate does not fall within the Tribunal's jurisdiction under section 41(1).

Clause 6 – proposed section 36(2)

Clause 6 proposes to give the Board broad discretion to make interim payments of different amounts to different depositors or different classes of depositors. At the Bills Committee meeting on 20 May 2010, members noted that no criteria for exercising this discretion were specified in the Bill, and were concerned about the discretion being exercised by the Board in an unreasonable, irrational or unlawful manner. In the light of members' concerns:

- (a) Please explain the policy intent behind giving the Board the power to make differential interim payments to different depositors or different classes of depositors.
- (b) Please consider further amending section 36 to spell out the circumstances in which differential interim payments may be made and/or the factors which the Board will take into account in making such differential payments.

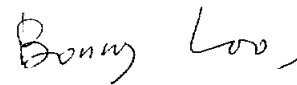
Clause 13 – proposed section 1(2) of Schedule 4

As regards the proposed definition of "amount of relevant deposits" (the definition) in section 1(1) of Schedule 4, the proposed section 1(2) of the said Schedule provides for the apportionment of deposits and liabilities where a depositor consists of 2 or more persons. While the proposed section 1(2) deals with depositors consisting of 2 or more persons who hold deposits in their own right, under a bare trust and under a trust (i.e. paragraphs (a), (b) and (d) of the proposed definition), no provision is made in relation to a depositor consisting of 2 or more persons holding the deposits in a client account (i.e. paragraph (c) of the proposed definition). Please consider whether it is necessary to include a provision to cover this matter. As you are aware, section 29(4) and (5) of Cap. 581 provides for the apportionment of a

protected deposit in circumstances where the beneficiary under a bare trust or a client under a client account consists of 2 or more persons. Should similar provisions be made in relation to the apportionment of deposits and liabilities for the purposes of the definition?

We would appreciate it if you could let us have the Administration's reply in both languages as soon as possible. Please also send an electronic copy of your reply to yfchoi@legco.gov.hk.

Yours sincerely,

A handwritten signature in black ink that reads "Bonny Loo" with a small flourish at the end.

(Bonny LOO)
Assistant Legal Adviser

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