

立法會
Legislative Council

LC Paper No. CB(1) 788/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/10/02/2

Bills Committee on Deposit Protection Scheme Bill

Minutes of the ninth meeting
held on Monday, 22 December 2003, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Albert HO Chun-yan (Chairman)
Dr Hon Eric LI Ka-cheung, GBS, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Dr Hon David LI Kwok-po, GBS, JP
Hon Fred LI Wah-ming, JP
Hon Bernard CHAN, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Abraham SHEK Lai-him, JP
- Public officers attending** : Hong Kong Monetary Authority

Mr Raymond LI
Executive Director (Banking Development)

Mr Raymond CHAN
Acting Division Head (Banking Development)

Financial Services and the Treasury Bureau

Mr Edmond LAU
Principal Assistant Secretary (Financial Services)

Mrs Millie NG
Assistant Secretary (Financial Services)

Department of Justice

Mr Lawrence PENG
Senior Assistant Law Draftsman

Ms Grace LEUNG
Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mrs Mary TANG
Senior Council Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 610/03-04 -- Minutes of the meeting held on
11 December 2003)

The minutes of the meeting held on 11 December 2003 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 556/03-04(03) -- Draft Committee Stage
amendments proposed by the
Administration

LC Paper No. CB(1) 626/03-04(01) -- List of follow-up actions arising
from previous meetings (as at
19 December 2003)

LC Paper No. CB(1) 626/03-04(02) -- Administration's paper on "Report
to the Chief Executive in Council
on Occurrence of Specified
Event")

2. As Mr Albert HO, Chairman, was late for the meeting, members present elected Mr TSANG Yok-sing to chair the meeting. Mr HO subsequently arrived at 9:20 am and took over the chair.

3. The Committee deliberated (Index of proceedings attached at **Annex A**).
4. The Administration was requested to -
 - (a) consider making it clear in the Bill that on occurrence of a specified event, the Monetary Authority (MA) would trigger the payment mechanism under the Deposit Protection Scheme (DPS) and effect payments as soon as possible;
 - (b) consider linking the payment mechanism under DPS with the appointment of a Manager under section 52(1)(C) of the Banking Ordinance (Cap.155) (BO) such that the revocation of such an appointment would also mean that MA's decision under clause 21(1) of the Bill would be revoked as well;
 - (c) advise whether the winding-up order made by the Court of First Instance under clause 21(1) was subject to appeal and if so, the implications on the legitimacy of anything done pursuant to the occurrence of the specified event under clause 22(5);
 - (d) compare the power of CE in C under clause 22(4) with overseas schemes with particular reference to the time frame within which CE in C should make a determination;
 - (e) consider specifying the circumstances under which CE in C could exercise its power under clauses 8 and 22(4); and
 - (f) consider whether the word "may" in clause 22(4) should be amended to read "shall" and whether the word "confirm" should be deleted.
5. The meeting ended at 10:25 am.

**Proceedings of the meeting of the
Bills Committee on Deposit Protection Scheme Bill
Meeting on Monday, 22 December 2003, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 001139	Mr TSANG Yok-sing	Election of Chairman Introductory remarks and confirmation of minutes of the meeting held on 11 December 2003 (LC Paper No. CB(1) 610/03-04))	
001140 - 002421	Administration Mr SIN Chung-kai	Discussion on the Administration's paper on "Report to the Chief Executive in Council on Occurrence of Specified Event" (LC Paper No. CB(1) 626/03-04(02)) (a) Whether a failed bank would be allowed to make representations under clause 22(2); and (b) Inappropriate to introduce a statutory provision to require MA to allow the failed bank to make representations before deciding to trigger payments under DPS	

Time marker	Speaker	Subject(s)	Action required
002422 - 003025	Miss Margaret NG	<p>(a) Concern about the confusion which might arise if MA's decision to trigger payment under DPS was subsequently revoked by CE in C under clause 22(4);</p> <p>(b) Query about the need for clause 22(4) when CE in C was already empowered under section 53(1) of BO to confirm or reverse MA's decision on appointment of a Manager under section 52(1)(C) of BO; and</p> <p>(c) Payments under DPS, once triggered, would not be withheld unless the appointment of a Manager was reversed by CE in C under section 53(1) of BO</p>	
003026 - 003200	Administration	CE in C's decision to confirm or reverse MA's decision on appointment of a Manager under BO was separate from its decision to revoke MA's decision under the Bill	

Time marker	Speaker	Subject(s)	Action required
003201 - 003630	Miss Margaret NG	<p>(a) Query on the need to empower CE in C to revoke MA's decision in both BO and the Bill on the same specified event;</p> <p>(b) Concern about the confusion brought about by the sequence of events as set out in paragraph 7 of the paper;</p> <p>(c) Revocation would only be justified if the failed bank was rescued by a "white knight" with strong financial background; and</p> <p>(d) Need to make it clear to depositors that once payment under DPS was triggered, compensation would be made unless and until MA's decision was revoked by CE in C on grounds that the failed bank was being rescued</p>	
003631 - 003899	Administration	The loss of depositors after compensation was paid under DPS would affect the value of the bank as well as the viability of rescue plans	
003900 - 004529	Miss Margaret NG Administration Mr TSANG Yok-sing	Sequence of events after the occurrence of a specified event	The Administration to consider making it clear in the Bill that on occurrence of a specified event, MA would trigger the payment mechanism under DPS and effect payments as soon as possible

Time marker	Speaker	Subject(s)	Action required
004530 - 004600	Miss Margaret NG	Query about the need to empower CE in C to revoke MA's decision under clause 22(4) when this was already provided in BO; and whether it was possible that the payment mechanism under DPS could be triggered by the appointment of a Manager under BO	The Administration to consider linking the payment mechanism under DPS with the appointment of a Manager under section 52(1)(C) of BO such that the revocation of such an appointment would also mean that MA's decision under clause 21(1) of the Bill would be revoked as well
004601 - 004834	Administration	There were situations where the appointment of a Manager under BO arose from mistrust of the management of a bank rather than its failure	
004835 - 005144	Miss Margaret NG Administration	The effect of a winding-up order made by the Court of First Instance (Mr Albert HO took over the chair at this juncture)	The Administration to advise whether the winding-up order made by the Court of First Instance under clause 21(1) was subject to appeal and if so, the implications on the legitimacy of anything done pursuant to the occurrence of the specified event under clause 22(5)
005145 - 005800	Mr TSANG Yok-sing	The Bill would allow CE in C to revoke MA's decision on account of rescue plans by a "white knight"	
005801 - 005847	Administration	CE in C would only revoke MA's decision in the interest of depositors and on the need to maintain stability of the banking system	

Time marker	Speaker	Subject(s)	Action required
005848 - 010201	Miss Margaret NG	<p>(a) Not supporting the Bill for empowering CE in C to revoke MA's decision on account of rescue plans by "white knight" which might later turn out to be non-viable;</p> <p>(b) Concern about impacts of such a revocation on depositors and confidence in the banking system;</p> <p>(c) Need for an automatic payment mechanism under DPS; and</p> <p>(d) Query whether a bank would lose its depositors after payment was made under DPS</p>	
010202 - 010433	Administration	Depositors would be assured that payments would be made upon the occurrence of a specified event unless MA's decision was revoked by CE in C	
010434 - 010540	Administration Mr SIN Chung-kai	Experience in dealing with the failure of the Bank of Credit and Commerce Hong Kong Limited	
010541 - 010900	Chairman	<p>(a) Concern about the need for CE in C to take into account the consequences when considering revocation of MA's decision; and</p> <p>(b) Whether it would be better for compensation under DPS to be paid after CE in C had made its decision</p>	

Time marker	Speaker	Subject(s)	Action required
010901 - 011014	Administration	A prompt decision and an early announcement on DPS payments would be more effective in maintaining depositors' confidence in the banking system as past experience revealed that any delay would provide room for rumours which might lead to a run on other banks	
011015 - 011322	Mr CHAN Kam-lam	Support for the proposed revocation mechanism in the Bill which was meant to safeguard financial stability and depositors' interest	
011323 - 011737	Chairman Mr SIN Chung-kai Administration ALA6	The power of CE in C under clause 22(4) should be exercised in the interest of depositors and financial stability as well as the effective operation of the banking system	
011738 - 012538	Chairman Mr SIN Chung-kai Administration	<p>The need for specific time frame within which CE in C should make a determination under clause 22(4) -</p> <p>(a) No such restriction in other legislation; and</p> <p>(b) Need for flexibility as any fixed time limit would undermine CE in C's ability to handle banking crisis</p>	The Administration to compare the power of CE in C under clause 22(4) with overseas schemes with particular reference to the time frame within which CE in C should make a determination
012539 - 012733	Administration Mr CHAN Kam-lam	Payment process	

Time marker	Speaker	Subject(s)	Action required
012734 - 013738	Ms Audrey EU Administration Chairman	Whether the direction of CE in C under clause 8 would override its decision made under clause 22(4)	The Administration to consider specifying the circumstances under which CE in C could exercise its power under clauses 8 and 22(4)
013739 - 013837	ALA6	Drafting of clause 22(4)	The Administration to consider whether the word “may” in clause 22(4) should be amended to read “shall” and whether the word “confirm” should be deleted
013838 - 014201	Ms Audrey EU Administration Chairman	The need to specify in clause 8 that directions by CE in C should be confined to emergency situations	
014202 - 015000	Chairman Administration Ms Audrey EU Mr CHAN Kam-lam	Continuation of clause-by clause examination of the Bill Clause 23 - Quantification date	
015001 - 015128	Chairman	Clause 24 - Protected deposits to include portion thereof	
015129 - 015346	Chairman	Date of next meetings	