

For Information on  
18 February 2004

**Bills Committee on  
Deposit Protection Scheme Bill**

**Provision of further information on past court cases  
relating to the interpretation of “suffer” in Clause 44**

At the meeting of the DPS Bills Committee held on 10 February 2004, a Member requested the Administration to provide past court cases on the interpretation of the word “suffer” and to confirm whether it is the Administration’s policy intention to impose a policing responsibility on those persons subject to the secrecy provisions in the DPS Bill.

2. The Department of Justice has conducted a research in this subject. The findings are set out below.

**Past court cases**

3. There is a Hong Kong case (Yu Yuk Sun v Wing Shing Firm, (1951) HKLR 136) on the meaning of “suffer”. In that case, the court considered whether the tenant has “suffered” – within the meaning of section 18(h) of the Landlord and Tenant Ordinance, 1947 – any person residing or lodging with him to be guilty of conduct that is a nuisance or annoyance to the landlord or other occupants. The court said that the word “suffered” must imply some knowledge on the part of the tenant or at least on the part of the tenant’s agent of the relevant conduct. A tenant could not be said to suffer anything to happen of which he had no knowledge, unless the relevant knowledge was in his agent.

4. The court quoted two old English cases (Somerset v Wade, 63 LJMC 127 and Somerset v Hart, 53 LJ Rep MC 77), in which the English court was of the opinion that a person could not suffer a thing without knowing of the thing.

5. In Yu Yuk Sun, the court also quoted another English case: Barton v Reed, [1932] 1 Ch 362. We also found another English case: Rochford RDC v Port of London Authority, [1914] 2 KB 916, which is relevant to the current issue. Based on the judgments of these cases, we can derive the following basic principle in the interpretation of the word “suffer” –

*“If a person does not prevent a thing that –*

- (a) he may prevent without committing any legal wrong; and*
- (b) he has the complete power (to the extent of taking legal proceedings) to prevent,*

*he suffers it.”*

## **Interpretation**

6. In light of the above cases, we believe that:-
- (a) if a person has a duty not to “suffer” any other person to have access to the secret matter, he must do everything within his power (including taking legal proceedings) to stop the access; and
  - (b) the person has no such duty unless he “knows” that there is someone who has access to the secret matter. He is not required to keep a look-out for any other person’s access to the secret matter.

Hong Kong Monetary Authority  
Financial Services and the Treasury Bureau  
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