

**Bills Committee on
Deposit Protection Scheme Bill**

CB(1) 1190/03-04(01)

**List of follow-up actions arising from previous meetings
(as at 3 March 2004)**

Date of meeting	List of follow-up actions	Administration's response
18 July 2003	<p>(a) To advise the changes in percentages of depositors and value of deposits to be covered as well as the costs to banking institutions if the proposed compensation limit is increased from \$100,000 to \$150,000 and \$200,000 per depositor per bank respectively.</p> <p>(b) To compare the proposed Deposit Protection Scheme (DPS) with its overseas equivalents in terms of scheme features, level of protection, contribution from member banks and appeal mechanism etc.</p>	<p>Information paper on "Coverage Limit" issued for the meeting on 17 September 2003 (CB(1)2440/02-03(07))</p> <p>Information paper on "Comparison with Overseas Schemes" issued for the meeting on 17 September 2003 (CB(1)2440/02-03(07))</p>
17 September 2003	<p>(a) To consider the merits of introducing a statutory requirement to appoint persons who have experience in consumer protection to the Hong Kong Deposit Protection Board (HKDPB). Reference should be made to other existing legislation, including the Estate Agents Ordinance (Cap. 511).</p> <p>(b) To provide a flow chart showing the time frame and sequence of events which will take place before compensation is payable to depositors in the case of failure of a bank.</p> <p>(c) To consider further development of DPS and to provide a paper on the pros and cons of linking the coverage limit to inflation as is being considered in the United States.</p>	<p>Information paper on "Appointment to HKDPB" issued for the meeting on 25 September 2003 (CB(1)2496/02-03(02))</p> <p>Information paper on "Timeline Showing the Sequence of Events Before Compensation is Paid to Depositors" issued for the meeting on 3 October 2003 (CB(1)2533/02-03(05))</p> <p>Information paper on "Indexing Coverage Limit" issued for the meeting on 3 October 2003 (CB(1)2533/02-03(04))</p>

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25 September 2003	<p>(a) To reflect the Administration's policy intention, consideration should be given to including in the Bill objective appointment criteria for members of the HKDPB.</p> <p>(b) To provide an organizational chart of the HKDPB secretariat and its estimated annual expenditure.</p> <p>(c) To provide a paper explaining the rationale behind and the application of clause 44 on confidentiality, with particular reference on how a person may contravene clause 44(1)(a).</p> <p>(d) To include in the discussion schedule clauses in the Bill which are relevant to the policy issues to be examined.</p>	<p>The Administration will consider introducing appropriate Committee Stage amendments (CSAs) to address members' concern</p> <p>Information paper on "Board Structure and Administration Costs" issued for the meeting on 21 October 2003 (CB(1)92/03-04(02))</p> <p>Information paper on "Confidentiality" issued for the meeting on 4 November 2003 (CB(1)220/03-04(03))</p> <p>Updated discussion schedule (CB(1)2533/02-03(02))</p>
3 October 2003	<p>(a) To request HKDPB to work out practice directions for banks so that depositors will be made aware of the extent of coverage of their deposits.</p> <p>(b) To relay to the future HKDPB the need to be more proactive in working out contingency arrangements, such as the retrieval of necessary information and the provision of enquiry services to the public, in the event of failure of a bank.</p>	<p>The Administration has agreed to relay both requests to HKDPB once it is established</p>

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21 October 2003	<p>(a) To consider the need for arranging internal auditing in respect of investment of the DPS Fund.</p> <p>(b) To provide the basis, including the underlying assumptions and standards, upon which the estimated annual administration cost of \$7 to \$8 million in normal times for the HKDPB is arrived at. To also provide the estimated cost to be incurred in the event of failure of a medium-size bank.</p>	<p>Information paper on "Administration Cost" issued for the meeting on 4 November 2003 (CB(1)220/03-04(04))</p>
4 November 2003	<p>(a) To provide and elaborate the application of the provisions in various ordinances referred to in footnote 7 of the Administration's paper on "Confidentiality" which are relevant to clause 44(1)(a) of the Bill. To also review the drafting of clause 44(1)(a), particularly on the extent to which a person shall preserve and aid in preserving secrecy under the Bill.</p> <p>(b) To list out in a table provisions in the Securities and Futures Ordinance (Cap. 571) from which the relevant clauses in the Bill are modelled after.</p> <p>(c) To provide an implementation time-table showing the timeframes within which the proposals under the Deposit Protection Scheme Ordinance will come in full operation.</p> <p>(d) To review the drafting of clause 43 to make it clear that a case can be remitted to the Deposit Protection Appeals Tribunal after the Court of Appeal rules against a determination of the Tribunal.</p>	<p>Information paper on "Confidentiality" issued for the meeting on 11 December 2003 (CB(1)556/03-04(02))</p> <p>Draft CSAs issued for the meeting on 11 December 2003 (CB(1)556/03-04(03))</p> <p>Information paper on "Implementation Timetable" issued for the meeting on 18 November 2003 (CB(1)328/03-04(02))</p> <p>Draft CSAs issued for the meeting on 11 December 2003 (CB(1)556/03-04(03))</p>

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18 November 2003	<p>(a) To consult those deputations which have expressed views on the Bill the relevant CSAs to be proposed by the Administration.</p> <p>(b) To review the applicability of the term “depositor”, particularly with reference to bare trustee, in the Bill to ensure consistency.</p> <p>(c) To review the need for the definition on “practicable” under clause 2(1) and the part of the Chinese text of clause 2(2) which reads “包括該提述的文法變體或同語族詞句”.</p>	<p>The Administration has consulted the relevant deputations. At the request of Members, the Administration has provided its response to the latest concerns of the Law Society of Hong Kong to the Bills Committee</p> <p>Agreed to review</p> <p>Draft CSAs issued for the meeting on 11 December 2003 (CB(1)556/03-04(03)).</p>
11 December 2003	<p>(a) To critically review the extent to which a person shall “aid in preserving secrecy” and to consider the practicability of adding "take such reasonable steps" before “aid in preserving secrecy” under clause 44(1)(a).</p> <p>(b) To advise whether the definition of “bare trustee” under clause 2 will include “resulting trust”.</p> <p>* (c) To delete the part “or in some other publication determined by the Board” in clause 7A(2). To also review the need for clauses 7A(4)(b) and 7A(5) when all the guidelines issued by the Board will have to be published in the Gazette.</p>	<p>Information paper on “Confidentiality” issued for the meeting on 10 February 2004 (CB(1)950/03-04(03))</p> <p>The Administration advises that the definition of “bare trustee” can include a trustee in a resulting trust situation depending on how the trust is structured</p> <p>See revised clause 7A in the second batch of CSAs issued for the meeting on 18 February 2004 (CB(1)1005/03-04(03))</p>

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11 December 2003	<p>* (d) To refine the drafting of clause 7A(4) with reference to similar provisions in other legislation, including the Building Management Ordinance (Cap. 344), Road Traffic Ordinance (Cap. 374) and Personal Data (Privacy) Ordinance (Cap. 486).</p> <p>* (e) To review the drafting of clause 14(4)(a) to make it clear that the provision will apply to the Board only.</p> <p>(f) To provide a separate paper on clause 22 addressing the following issues -</p> <ul style="list-style-type: none"> (i) whether a Scheme member should be given an opportunity to present his case before the Monetary Authority (MA) serves a notice in respect of the Scheme member under clause 21(2); (ii) the need to specify in clause 22(4) the circumstances under which the Chief Executive in Council (CE in C) can exercise its power to revoke MA's decision under clause 21(2); and (iii) the time-frame within which CE in C should decide whether to confirm or revoke MA's decision. 	<p>The Law Draftsman has considered this and believes that no changes to this provision are necessary</p> <p>See revised clause 14 in the second batch of CSAs issued for the meeting on 18 February 2004 (CB(1)1005/03-04(03))</p> <p>Information paper on "Report to the Chief Executive in Council on Occurrence of Specified Event" issued for the meeting on 22 December 2003 (CB(1)626/03-04(02))</p>
22 December 2003	<p>* (a) To 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.</p> <p>* (b) To 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.</p>	<p>See footnote 20 in CB(1)1005/03-04(03) issued for the meeting on 18 February 2004</p> <p>See footnote 17 in CB(1)1005/03-04(03) issued for the meeting on 18 February 2004</p>

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22 December 2003	<p>*(c) 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).</p> <p>*(d) 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.</p> <p>*(e) To consider specifying the circumstances under which CE in C could exercise its power under clauses 8 and 22(4).</p> <p>*(f) To consider whether the word "may" in clause 22(4) should be amended to read "shall" and whether the word "confirm" should be deleted.</p>	<p>See footnote 23 in CB(1)1005/03-04(03) issued for the meeting on 18 February 2004</p> <p>See footnote 18 in CB(1)1005/03-04(03) issued for the meeting on 18 February 2004</p> <p>See footnote 21 in CB(1)1005/03-04(03) issued for the meeting on 18 February 2004</p> <p>See footnote 18 in CB(1)1005/03-04(03) issued for the meeting on 18 February 2004</p>
5 January 2004	<p>(a) To provide the Administration's response to the latest concerns of the Law Society of Hong Kong.</p> <p>(b) To relay to the future Deposit Protection Board the need to ensure that banks will not, for administrative convenience, include clauses in contracts that will jeopardize depositors' entitlement, particularly those beneficiaries of trusts, to compensation under the Deposit Protection Scheme.</p>	<p>The Administration's response to the latest concerns of the Law Society of Hong Kong issued for the meeting on 4 February 2004 (CB(1)918/03-04(02))</p> <p>Agreed to relay to the future Deposit Protection Board</p>

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4 February 2004	<p>*(a) To advise the effect of the deeming provision under clause 22(5) on third-party dealings which have taken place before the revocation.</p> <p>(b) To provide the original submission of the Law Society of Hong Kong setting out its latest views on the Bill.</p> <p>*(c) To review the drafting of clause 38 taking into account similar provisions in other legislation apart from the Securities and Futures Ordinance (Cap. 571) (SFO).</p> <p>*(d) To re-consider the propriety of adapting the same provisions under sections 217 of SFO to clauses 40 and 42 of the Bill given the different scopes of the two Tribunals. To also consider putting clause 40(3)(b) under clause 42 such that any possible acts of contempt shall only be dealt with by the Tribunal. To specify in clause 40(3)(c) the subsection referred to is subsection (1)(c).</p> <p>*(e) To review the drafting of clause 43(2) to ensure that the proposed amendments are consistent with similar provisions in other legislation.</p>	<p>See footnote 24 in CB(1)1005/03-04(03) issued for the meeting on 18 February 2004</p> <p>Submission from the Law Society of Hong Kong forward by the Administration at members' request" issued for the meeting on 10 February 2004 (CB(1)950/03-04(02))</p> <p>See revised clause 38 in the second batch of CSAs issued for the meeting on 18 February 2004 (CB(1)1005/03-04(03))</p> <p>See revised clause 40(3) in the second batch of CSAs issued for the meeting on 18 February 2004 (CB(1)1005/03-04(03))</p> <p>The Administration will introduce appropriate CSAs to address members' comments</p>

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10 February 2004	<p>(a) To provide past court cases on the interpretation of the phrase “suffer or permit” under the new clause 44(1)(a). To confirm whether it is a policy intention to impose a policing responsibility under the new clause 44(1)(a). To also consider retaining the original clause 44(1)(c) for the sake of clarity.</p> <p>* (b) To review the application of clause 44(2) with reference to the Official Secrets Ordinance (Cap. 521).</p> <p>* (c) To consider capturing the fundamental principles of protected deposits in the principal ordinance while listing the exemptions in Schedule 1.</p> <p>* (d) To consider whether a higher threshold than simple majority should be set for resolutions to be passed by circulation under Schedule 2.</p>	<p>Information paper on “Provision of further information on past court cases relating to the interpretation of “suffer” in Clause 44 issued for the meeting on 18 February 2004 (CB(1)1005/03-04(02))</p> <p>See footnote 41 in CB(1)1005/03-04(03) issued for the meeting on 18 February 2004</p> <p>See revised definition of “protected deposit” and “relevant deposit” in section 2(1) and Schedule 1 in the second batch of CSAs issued for the meeting on 18 February 2004</p> <p>See revised section 6 of Schedule 2 in CB(1)1005/03-04(03) issued for the meeting on 18 February 2004</p>

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18 February 2004	<p>(a) To provide a flow chart showing the sequence of events in different scenarios where the Monetary Authority (MA)'s decision to trigger payment under the Deposit Protection Scheme (DPS) is revoked by the Chief Executive in Council (CE in C).</p> <p>(b) To review the drafting of clauses 21 and 22 to ensure that MA will not be precluded from re-triggering payment under DPS in the event that CE in C has annulled its revocation of MA's original trigger decision. Reference shall be made to similar provisions in other legislation.</p>	<p>Information paper on "Flowchart showing the sequence of events after the occurrence of a specified event" issued for the meeting on 5 March 2004 (CB(1)1190/03-04(02))</p> <p>- ditto -</p>

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3 March 2004