

For discussion on
25 September 2003

**Bills Committee on
Deposit Protection Scheme Bill**

Appointment to Hong Kong Deposit Protection Board

Background

At the meeting of the Committee held on 17 September 2003, Members requested the Administration to consider the merits of specifying in the Deposit Protection Scheme (DPS) Bill that the Government should appoint persons with consumer protection experience to the Hong Kong Deposit Protection Board (the DPS Board). In considering this issue, reference should be made to existing legislation, including the Estate Agents Ordinance.

Research findings

2. The Administration has conducted a computer search for the term “*consumer*” in our existing laws. The provisions which are considered relevant in this context are:-

Section 3(3)(d) of the Airport Authority Ordinance (Cap. 483) which provides that the Chairman and other members of the Airport Authority “*may be appointed from among persons who appear to the Chief Executive to have had wide experience in air or other forms of transport, industry, or in commercial, financial, consumer or labour matters, or in administration*”.

Section 3(1)(c)(ii)(B) of the Schedule to the Estate Agents Ordinance (Cap. 511) which provides for the appointment of

certain members of the Estate Agents Authority from among “individuals...who, either because of their experience in property development, general administration or consumer affairs or because of their professional or occupational experience, appear to the Chief Executive either to have knowledge of estate agency work, or to be otherwise particularly suitable for appointment to membership of the Authority”.

3. As shown above, these provisions only specify experience in consumer matters or affairs as a factor to be taken into account by the Chief Executive in considering appointment to the relevant statutory bodies. They do not require that the relevant statutory bodies must consist of members familiar with consumer issues. The result of the computer search shows that there is no precedent in our existing laws which supports the proposition that the Government should be mandated to appoint a person with consumer protection experience to the DPS Board.

4. In addition, the Administration has reviewed the relevant legislation governing the establishment and operation of a number of statutory bodies both within and outside the financial services sector. Those requiring the Government to appoint persons representing sectoral interests in general involve the need to balance the interests of different stakeholders, such as employers and employees as in the case of the Mandatory Provident Fund Schemes Authority, or industry practitioners and the community as in the case of the Estate Agents Authority. The findings of this exercise are summarised in the Annex. As explained in para. 7 below, the need for the DPS Board to follow this approach is not apparent.

5. Apart from local legislation, the Administration has also looked at the practices of leading overseas schemes. It is found that none of the relevant legislation in the U.S., the U.K. and Canada requires the governing bodies of the overseas schemes to consist of persons with consumer or depositor protection background.

The Administration's view

6. Since the main objective of the DPS is to provide a measure of protection to small depositors, the Administration does not object to appointing a person with consumer protection experience to the DPS Board in principle. However, it is not desirable to specify in the legislation that the Government should be mandated to do so. This would undermine the Government's ability to ensure that the DPS Board is served by the best available candidates in accordance with the functions and operational requirements of the Board. As shown in the previous section, this is also inconsistent with existing laws and the practices of leading overseas schemes.

7. Moreover, it is important to note that the Government will not appoint any serving bankers to the DPS Board in order to avoid any potential conflict of interests. There is therefore no need to balance the number of members representing the banking industry and the depositors, as in the case of the Mandatory Provident Fund Schemes Authority or the Estate Agents Authority.

8. All in all, the Administration believes that the Chief Executive should be given the necessary latitude to appoint the best available candidates to enable the DPS Board to discharge its functions effectively. In our view, this would be the best way to protect the interests of depositors.

9. As mentioned in our response to relevant comments in Paper No. 2440/02-03 (08), it is the Administration's policy to ensure that the DPS Board is broadly based and representative of public interest. In this light, it may be undesirable to follow a sectoral interest approach in appointment which would undermine Government's ability to ensure that the Board has a good mix of expertise and experience.

Hong Kong Monetary Authority
Financial Services and the Treasury Bureau
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Composition of Some Statutory Bodies in Hong Kong

Ordinance	Statutory Body	Requirements to appoint persons representing specified interests
Financial services regulators		
Mandatory Provident Fund Schemes Ordinance (Cap 485)	Mandatory Provident Fund Schemes Authority	(a) At least 1 but no more than 2 non-executive directors should represent employers (b) At least 1 but no more than 2 non-executive directors should represent employees (c) The numbers of directors who represent employers and employees should be equal
Securities and Futures Ordinance (Cap 571)	Securities and Futures Commission	No such requirements
Compensation schemes		
Securities and Futures Ordinance (Cap 571)	Investor Compensation Company	Composition of the Board of the Directors of the Company is not in the SFO.
Protection of Wages on Insolvency Ordinance (Cap 380)	Protection of Wages on Insolvency Fund Board	The numbers of members who represent employers and employees should be equal
Employees Compensation Assistance Ordinance (Cap 365)	Employees Compensation Assistance Fund Board	(a) 2 members should represent employers (b) 2 members should represent employees (c) 1 member should have expertise in the practice of accounting, investment or law (d) 1 member should have expertise in the practice of insurance
Occupational Deafness (Compensation) Ordinance (Cap 469)	Occupational Deafness Compensation Board	(a) Not more than 2 members should represent employers (b) Not more than 2 members should represent employees (c) 2 members should be medical practitioners (1 from the Hospital Authority)

Ordinance	Statutory Body	Requirements to appoint persons representing specified interests
Travel Agents Ordinance (Cap 218)	Travel Industry Compensation Fund Management Board	No such requirements
Statutory bodies outside the financial services sector		
Airport Authority Ordinance (Cap 483)	Airport Authority	No such requirements
Broadcasting Authority Ordinance (Cap 391)	Broadcasting Authority	No such requirements
Consumer Council Ordinance (Cap 216)	Consumer Council	No such requirements
Estate Agents Ordinance (Cap 511)	Estate Agents Authority	(a) Not more than one fourth of the members should do estate agency work (i.e. they should come from the industry) (b) Not more than one fourth of the members should have knowledge of estate agency work either because of their experience in property development, general administration or consumer affairs or because of their professional or occupational experience (i.e. they should come from related professions) (c) At least half of the members should come from the community (d) The numbers of members under (a) and (b) should, as far as possible, be equal.
Housing Ordinance (Cap 283)	Housing Authority	No such requirements
Hospital Authority Ordinance (Cap 113)	Hospital Authority	No such requirements
Town Planning Ordinance (Cap 131)	Town Planning Board	No such requirements
Urban Renewal Authority Ordinance (Cap 563)	Board of the Urban Renewal Authority	No such requirements