

**Bills Committee on
Deposit Protection Scheme Bill**

CB(1) 626/03-04(01)

**List of follow-up actions arising from previous meetings
(as at 19 December 2003)**

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>

Date of meeting	List of follow-up actions	Administration's response
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 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 Committee Stage amendments 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 Committee Stage amendments 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 Committee Stage amendments 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>Response awaited</p> <p>Agreed to review</p> <p>Draft Committee Stage amendments 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>(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>Response awaited</p> <p>Response awaited</p> <p>Response awaited</p> <p>Response awaited</p> <p>Response awaited</p>

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11 December 2003	<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>Information paper on "Report to the Chief Executive in Council on Occurrence of Specified Event" to be discussed at the meeting on 22 December 2003 (CB(1)626/03-04(02))</p>

Council Business Division 1
Legislative Council Secretariat
19 December 2003

PART X

POWERS OF CONTROL OVER AUTHORIZED INSTITUTIONS

52. Powers of Monetary Authority

- (1) Where—
- (a) an authorized institution informs the Monetary Authority—
 - (i) that it is likely to become unable to meet its obligations; or
 - (ii) that it is insolvent or about to suspend payment;
 - (b) an authorized institution becomes unable to meet its obligations or suspends payment;
 - (c) the Monetary Authority is of the opinion that—
 - (i) an authorized institution is carrying on its business in a manner detrimental to the interests of—
 - (A) its depositors or potential depositors;
 - (B) its creditors; or
 - (C) holders or potential holders of multi-purpose cards issued by it or the issue of which is facilitated by it;
 - (ii) an authorized institution is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;
 - (iii) an authorized institution has contravened or failed to comply with any of the provisions of this Ordinance;
 - (iv) an authorized institution has contravened or failed to comply with any condition attached under section 16 to its authorization or approval, the condition specified in section 49(1), the condition specified in section 50(1), the condition specified in section 50(2) or the condition specified in section 51A(2); or
 - (v) his power under section 22(1) to propose to revoke the authorization of an authorized institution is exercisable (and whether or not section 23(1) has been complied with); or (*Replaced 4 of 1997 s. 10*)
 - (d) the Financial Secretary advises the Monetary Authority that he considers it in the public interest to do so,
- the Monetary Authority, after consultation with the Financial Secretary, may exercise such one or more of the following powers as may from time to time appear to him to be necessary—
- (A) to require the institution, by notice in writing served on it, forthwith to take any action or to do any act or thing whatsoever in relation to its affairs, business and property as he may consider necessary (including any requirement imposing

restrictions on the banking business, business of taking deposits as a deposit-taking company or business of taking deposits as a restricted licence bank, or business of issuing or facilitating the issue of multi-purpose cards as the case may be, which may be carried on by the institution); (*Replaced 49 of 1995 s. 13. Amended 4 of 1997 s. 10*)

- (B) subject to subsection (3E), to give a direction that, during the period for which the direction is in force, the institution shall seek advice on the management of its affairs, business and property from an Advisor, for which purpose the Monetary Authority shall appoint a person to be the Advisor of that institution; (*Replaced 49 of 1995 s. 13*)
 - (C) subject to subsections (3D) and (3E), to give a direction that, during the period for which the direction is in force, such of the affairs, business and property of the institution as are specified in the direction shall be managed by a Manager, for which purpose the Monetary Authority shall—
 - (I) appoint a person to be the Manager of that institution; and
 - (II) specify in the direction the primary objective or objectives (not inconsistent with the provisions of this Ordinance) with which the Manager shall comply; (*Replaced 49 of 1995 s. 13*)
 - (D) to report the circumstances to the Chief Executive in Council. (*Amended 68 of 1999 s. 3*)
- (2) Except in the circumstances specified in subsection (1)(a), the Monetary Authority shall not exercise the power conferred by subsection (1)(D) unless he has—
- (a) where the authorized institution is incorporated in Hong Kong and a direction given under subsection (1)(C) is in force in respect of the institution—
 - (i) given to the institution, and such relevant persons, if any, as he thinks fit, not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating—
 - (A) his intention to exercise such power; and
 - (B) his reasons for the exercise thereof; and
 - (ii) afforded the institution, and such relevant persons, if any, as he thinks fit, an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Chief Executive in Council); (*Replaced 49 of 1995 s. 13. Amended 68 of 1999 s. 3*)

- (b) where the authorized institution is incorporated outside Hong Kong and a direction given under subsection (1)(C) is in force in respect of the institution—
- (i) given to the institution, at its principal place of business outside Hong Kong, not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating—
 - (A) his intention to exercise such power; and
 - (B) his reasons for the exercise thereof; and
 - (ii) afforded the institution an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Chief Executive in Council); (*Replaced 49 of 1995 s. 13. Amended 68 of 1999 s. 3*)
- (c) in any other case—
- (i) given to the authorized institution not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating—
 - (A) his intention to exercise such power; and
 - (B) his reasons for the exercise thereof; and
 - (ii) afforded the institution an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Chief Executive in Council). (*Added 49 of 1995 s. 13. Amended 68 of 1999 s. 3*)

(2A) The Monetary Authority may give an authorized institution and any relevant person less than the 7 days' notice in writing referred to in subsection (2) where— (*Amended 49 of 1995 s. 13*)

- (a) he has the consent of the Financial Secretary to do so; and
- (b) to do so is reasonable in the circumstances. (*Added 67 of 1992 s. 3*)

(3) (*Repealed 49 of 1995 s. 13*)

(3A) Subject to subsection (3D), the Monetary Authority may from time to time vary a direction given under subsection (1)(C) in respect of—

- (a) the affairs, business and property specified in the direction of the authorized institution to which the direction relates;
- (b) the primary objective or objectives specified in the direction with which the Manager of the institution shall comply. (*Added 49 of 1995 s. 13*)

(3B) It is hereby declared that any thing done, in reliance on a direction given under subsection (1)(C), at any time before a variation under subsection (3A) of that direction shall not be invalid by reason only of that variation. (*Added 49 of 1995 s. 13*)

(3C) During the period for which a direction given under subsection (1)(C) is in force in respect of an authorized institution, any reference in this Part to—

- (a) the affairs, business or property, or any combination thereof, of the institution; or
- (b) the primary objective or objectives with which the Manager of the institution shall comply,

shall, unless the context otherwise requires, be construed to mean—

- (i) where paragraph (a) is applicable, such affairs, business or property, or combination thereof, as the case may be;
- (ii) where paragraph (b) is applicable, such primary objective or objectives,

specified in that direction as varied from time to time under subsection (3A).
(*Added 49 of 1995 s. 13*)

(3D) Notwithstanding any other provision of this Part, no direction given under subsection (1)(C) (including any variation thereof under subsection (3A)) in respect of an authorized institution incorporated outside Hong Kong shall apply to any of the affairs, business or property of the institution except—

- (a) so much of the affairs and business of the institution as are carried on, or managed, in or from Hong Kong; and
- (b) so much of the property of the institution as is either or both of the following—
 - (i) located in, or managed from, Hong Kong;
 - (ii) an asset of the institution's principal place of business in Hong Kong or of any local branch or local office. (*Added 49 of 1995 s. 13. Amended 32 of 2001 s. 10*)

(3E) The Monetary Authority shall not give a direction under subsection (1)(B) or (C) in respect of an authorized institution in relation to which the Court of First Instance has made an order for the winding-up of the institution. (*Added 49 of 1995 s. 13. Amended 25 of 1998 s. 2*)

(3F) It is hereby declared that the Monetary Authority may exercise his power under subsection (1)(B) or (C) in such a way as to appoint—

- (a) a company or partnership; or
- (b) without prejudice to the generality of paragraph (a), 2 or more persons,

to be the Advisor or Manager, as the case may be, of an authorized institution.
(*Added 49 of 1995 s. 13*)

(3G) Where the Monetary Authority exercises his power under subsection (1)(C) in such a way as to appoint 2 or more persons to be the Manager of an authorized institution, he shall—

- (a) by notice in writing, specify which of the duties and powers imposed or conferred on a Manager under this Ordinance shall

be discharged or exercised, as the case may be, in relation to the institution, by—

- (i) any such person alone;
- (ii) any such persons jointly;
- (iii) each such person; and

(b) attach that notice to the direction concerned given under that subsection served on the institution under section 53A(1), and the provisions of this Ordinance (including section 53G) shall be read and have effect with such modifications as are necessary to take into account that notice. (*Added 49 of 1995 s. 13*)

(3H) For the avoidance of doubt, it is hereby declared that a person appointed under subsection (1)(B) or (C) to be the Advisor or Manager of an authorized institution may be a person who holds an appointment under section 5A(3) of the Exchange Fund Ordinance (Cap. 66). (*Added 49 of 1995 s. 13*)

(3I) (*Repealed 4 of 1997 s. 27*)

(4) Every director, every chief executive and every manager of an authorized institution which fails to comply with any requirement of the Monetary Authority under subsection (1)(A) commits an offence and is liable— (*Amended 32 of 2001 s. 24*)

- (a) on conviction upon indictment to a fine at tier 9 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 5 for every day during which the offence continues; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

(5) In this section, “relevant person” (有關人士), in relation to an authorized institution, means any person who—

- (a) is the Manager of the institution;
- (b) is a minority shareholder controller, majority shareholder controller or indirect controller of the institution;
- (c) has ceased to be a chief executive or director of the institution by virtue of section 53B(1)(a);
- (d) is a chief executive or director of the institution by virtue of the operation of section 53B(2). (*Added 49 of 1995 s. 13*)

(*Amended 82 of 1992 s. 25*)

53. Powers of Chief Executive in Council

(1) Where—

- (a) the Monetary Authority makes a report to the Chief Executive in Council under section 52(1)(D);

- (b) any person appeals to the Chief Executive in Council under section 132A(1) against a decision of the Monetary Authority under section 52(1)(A), (B) or (C) or (3A); or (*Amended 49 of 1995 s. 14; 4 of 1997 s. 27*)
- (c) the Financial Secretary refers a report and his recommendations thereon to the Chief Executive in Council under section 117(5)(c),

the Chief Executive in Council may, without prejudice to any of the powers conferred on the Monetary Authority by Part V or VI, exercise one or more of the following powers— (*Amended 94 of 1993 s. 17; 49 of 1995 s. 14*)

- (i) to confirm, vary or reverse any requirement, appointment or direction made by the Monetary Authority;
- (ii) (*Repealed 49 of 1995 s. 14*)
- (iii) to direct the Financial Secretary to present a petition to the Court of First Instance for the winding-up of the authorized institution or former authorized institution by the Court of First Instance. (*Amended 82 of 1992 s. 25; 25 of 1998 s. 2*)

(2) The Chief Executive in Council may, before considering any report or appeal under subsection (1), seek the advice of the Banking Advisory Committee or the Deposit-taking Companies Advisory Committee, or both, but shall not be bound to follow any such advice.

(3) (*Repealed 49 of 1995 s. 14*)

(*Amended 68 of 1999 s. 3*)

53A. Notification of direction under section 52(1)(B) or (C), etc.

- (1) A direction given under section 52(1)(B) or (C) shall—
 - (a) be in writing;
 - (b) be served on the authorized institution specified in the direction at its principal place of business in Hong Kong;
 - (c) take effect immediately it is so served; and
 - (d) state the name and address of the Advisor or Manager, as the case may be, appointed in respect of that institution.
- (2) A variation under section 52(3A) of a direction given under section 52(1)(C) shall—
 - (a) be in writing;
 - (b) be served on—
 - (i) the authorized institution specified in the direction at its principal place of business in Hong Kong except that, in the case of an authorized institution incorporated outside Hong Kong, it shall be served on the institution's principal place of business outside Hong Kong; and

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- (ii) the Manager of the institution; and
(c) take effect immediately it is so served, unless otherwise specified in the variation.
- (3) A direction in writing given under section 52(1)(C), and a variation in writing under section 52(3A) of such a direction, include a copy of the direction or variation, as the case may be.
- (4) Notice of a direction given under section 52(1)(C) shall be published by the Monetary Authority by notice in the Gazette and in such other ways as appear to him expedient for notifying the public.
- (5) Subsection (4) shall apply to a notice under section 52(3G) as it applies to a direction given under section 52(1)(C).
- (Added 49 of 1995 s. 15)*

53B. Effect of direction under section 52(1)(C)

- (1) Subject to subsection (2) and section 53C(3)(a)(i), (b) and (c), immediately upon a direction given under section 52(1)(C) coming into force—