

立法會

Legislative Council

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Paper for the House Committee meeting on 19 March 2004

Report of the Bills Committee on Deposit Protection Scheme Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Deposit Protection Scheme Bill.

Background

2. In light of the growing trend in international financial systems in favour of explicit forms of deposit protection, the Hong Kong Monetary Authority (HKMA) commissioned a consultancy study on enhancing deposit protection in Hong Kong in April 2000. A consultation paper was published in October 2000 to invite views on the establishment of a Deposit Protection Scheme (DPS) to strengthen the resilience of the banking system against external shocks. In December 2000, the Legislative Council also passed a motion urging the Government to expeditiously implement a DPS for effectively protecting small depositors, and to formulate appropriate complementary measures to reduce the risk of moral hazard.

3. On 24 April 2001, the Chief Executive in Council (CE in C) approved in principle the establishment of a DPS and requested HKMA to work out the detailed design features of the Scheme. In March 2002, a second round of public consultation was conducted on HKMA's detailed recommendations focusing on the proposed structure for DPS. Responses received were generally supportive of HKMA's proposals, although there were some suggestions on reduction of cost of DPS through a smaller fund size, a longer built-up period and greater Government's commitment.

The Bill

4. The Bill seeks to provide for -

- (a) the establishment of a Hong Kong Deposit Protection Board (the Board);

- (b) the establishment of a DPS by the Board for the purpose of providing compensation to depositors under certain circumstances in respect of deposits maintained with banks that are members of the Scheme;
- (c) the establishment of a DPS Fund from which such compensation is to be paid; and
- (d) contributions to the Fund, and entitlement to, and payment of compensation from the Fund.

Under the Bill, the Board will be required to establish and maintain DPS as well as to manage and administer the Fund. The Board will only have paybox functions such as assessment and collection of contributions, investment of funds and paying compensation to depositors. The Board will perform its functions through HKMA, but the cost incurred by HKMA will be recovered from the Fund. Unless exemption is granted by the Board, every licensed bank will be a member of DPS. The Fund will be built up by collection of contributions from member banks and other incomes. The Fund will be invested in a limited range of low risk and liquid assets as set out in the Bill. Compensation from the Fund is payable if a winding up order has been made or HKMA has made a decision that compensation should be paid after consultation with the Financial Secretary (FS). The HKMA's decision to trigger compensation payments is subject to review by CE in C. The compensation limit for protected deposits with a member bank will be HK\$100,000 per depositor.

The Bills Committee

5. At the House Committee meeting on 2 May 2003, members agreed that priority be given to the formation of a Bills Committee to study the Bill. Under the chairmanship of Hon Albert HO, the Bills Committee has held 14 meetings. The membership list of the Bills Committee is at **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from the legal profession and related sectors. Seven groups have made written and/or oral representation to the Bills Committee. A list of these groups is at **Appendix II**.

Deliberations of the Bills Committee

Hong Kong Deposit Protection Board

Composition of the Board

6. Under the Bill, the Board is not a servant nor an agent of the Government. It has the power to do all such things as are necessary for the performance of its functions which aim to protect small depositors. Members consider that persons with consumer protection experience should be appointed to the Board. While not objecting to this principle, the Administration holds the view that it is not desirable to specify in the legislation that the Government is mandated to do so as this will undermine the

Government's discretion to appoint the best available candidates to meet the functional and operational requirements of the Board. To address members' concern, the Administration is prepared to specify in the legislation that experience in consumer affairs or matters will be one of the factors to be taken into account by the Chief Executive in considering appointments to the Board. Some flexibility in this appointment power is necessary to ensure that the Board has a good mix of expertise and experience. For the avoidance of conflict of interest, serving bankers will not be appointed to the Board. To reflect the policy intention, members consider it necessary for the Administration to include objective appointment criteria in the Bill. Committee Stage amendments (CSAs) will be introduced to this effect.

Power of the Chief Executive in Council to revoke HKMA's trigger decision

7. The Bill proposes that HKMA shall, as soon as practicable, report to CE in C the occurrence of a specified event in relation to a Scheme member if -

- (a) a winding-up order has been made by the Court of First Instance; or
- (b) a notice of HKMA's decision that compensation should be paid from the Fund to the depositors of the Scheme member has been served on the Board. Such a decision should be made after consultation with FS and after a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) (BO) or a provisional liquidator has been appointed.

8. Members note that CE in C has the power to confirm or revoke HKMA's decision to trigger payment under sub-paragraph (b) above. Concern has been raised on the power of CE in C to revoke HKMA's trigger decision lest this may create undue confusion, particularly if the revocation comes after payment has been made under DPS. According to the Administration, the proposed arrangement aims to provide checks and balances against HKMA's power to trigger payment under DPS. It also gives the Scheme member an opportunity to appeal to CE in C against HKMA's decision. Besides, CE in C may only revoke HKMA's trigger decision in the following situations -

- (a) such a decision is clearly unreasonable in the circumstances; or
- (b) developments thereafter have rendered the decision no longer appropriate. For example, an offer by a "white knight" with strong financial background to rescue the failed Scheme member and to assume all deposit liabilities.

Given the urgency in addressing a bank crisis, it is expected that CE in C will, upon receipt of HKMA's report, expeditiously determine whether to confirm or revoke the HKMA's decision to trigger payment under DPS.

9. In view of the fact that there is already a mechanism under BO for CE in C to revoke HKMA's decision to appoint a Manager in respect of a failed bank, the Bills Committee has examined whether consideration can be given to linking the payment

mechanism under DPS with the appointment of a Manager under BO, thereby dispensing with the need for a triggering mechanism under the Bill. The Administration's explanation is that there may be cases where CE in C would want to revoke HKMA's trigger decision but to keep the appointment of the Manager. By way of illustration, CE in C may consider the trigger decision no longer appropriate in the event that an offer by a "white knight" to rescue the failed Scheme member has been received, but there is still a need to put the failed Scheme member under the administration of a Manager pending the taking over by the "white knight". Besides, there may be situations where payment under DPS is triggered following the appointment of a provisional liquidator and without a Manager being appointed in respect of the failed Scheme member. If the payment mechanism under DPS were to be linked with the appointment of a Manager, CE in C might not be able to set aside the trigger decision even though this will be in the best interest of the depositors of the failed Scheme member. In light of members' concerns, the Administration is prepared to move CSAs to provide some guidance on the factors which CE in C shall take into consideration in determining whether to confirm or revoke HKMA's trigger decision. These amendments will also make it clear that CE in C should make a decision as soon as practicable.

10. Members note that the Bill does not cover the situation where payment under DPS is triggered by virtue of the issuance of a winding-up order, but the order is subsequently set aside. In this connection, the Administration will move CSAs to preserve the legitimacy of anything done by the Board in accordance with the DPS legislation pursuant to a specified event which occurs following the issuance of a winding-up order. As regards the effect of revocation, members note that any third-party dealings which have taken place before the revocation should not be affected. On the question of whether HKMA can re-trigger compensation payment under DPS after CE in C has revoked the original trigger decision, the Administration's explanation is that according to legal advice, HKMA will not be precluded from exercising the power to trigger payment solely because CE in C has just revoked HKMA's decision that was made in relation to the same Scheme member. For ease of reference, a flow chart showing the sequence of events after the occurrence of a specified event under different scenarios is at **Appendix III**.

Deposit Protection Scheme

Membership

11. Under the Scheme, every bank is a member of the Scheme and remains as such during the validity of its banking license. DPS membership is therefore linked directly to an institution's banking licence viz. once an institution is authorized by HKMA to conduct banking business in Hong Kong, it will automatically become a member of the Scheme unless exempted from participation. On the other hand, the institution will automatically cease to be a member of the Scheme once its banking licence is revoked.

12. Question has been raised on why restricted licence banks (RLBs) and deposit-taking companies (DTCs) are not covered under the Scheme. There is concern that such an exclusion may adversely affect the business of these institutions. According to the

Administration, RLBs and DTCs are not permitted to take deposits below \$100,000 under the current three tier system of authorization. Given the relatively low coverage limit of \$100,000 of the proposed DPS, it is not expected that the business of RLBs and DTCs will be significantly affected if they are excluded from the Scheme. Besides, the authorization criteria for a banking licence have been relaxed since May 2002. A RLB or DTC which wishes to become protected under DPS may seek to be upgraded to the status of a licensed bank.

Exemption

13. The Bill proposes that an overseas incorporated bank will be allowed to apply for exemption from participating in DPS if the deposits taken by the bank's Hong Kong offices are protected by a scheme in the bank's home jurisdiction and the scope and level of protection afforded by that scheme are not less than those offered to such deposits by the DPS in Hong Kong. This aims to avoid double charging of premium and help to maintain Hong Kong's attractiveness as an international financial centre. Members opine that an exempted bank should be required to inform its depositors or prospective depositors that it is not a DPS member and therefore any deposits taken by it are not protected by the DPS in Hong Kong. The bank should also provide details of the protection offered by its home jurisdiction scheme, including the level of protection and the types of deposits protected. According to the Administration, these requirements are already specified in the Bill. In addition, the Board will be empowered to make rules to require a Scheme member to make known to the public under specified circumstances whether or not it is a member of DPS or whether or not a deposit, or any other financial product offered by the Scheme member, is a protected deposit. The Board may also publish a full list of Scheme members on its website and in its Annual Report.

Contributions to the Fund

14. Members note that according to the model developed to estimate the cost of DPS, it is expected that for a coverage limit of \$100,000 on a "per depositor per bank" basis, a target fund size of around \$1.6 billion or 0.3% of total protected deposits will be sufficient to cover most of the losses that will be sustained by DPS. At this level, the Fund will meet the International Monetary Fund's benchmark of being able to absorb the losses arising from the simultaneous failures of two medium-sized banks. The Fund will be built up by collection of contributions from member banks and other incomes. Contributions are calculated on the basis of individual member banks and a differential rate system based on the supervisory ratings of individual banks determined by HKMA. The rates of contributions from member banks during the Fund build-up period will range from five to 14 basis points of the relevant deposits of the banks. After the Fund built-up period, the rates will range from 0.75 to two basis points.

15. To keep the Fund within the pre-defined range, a rebate and surcharge mechanism will be put in place, under which a surcharge will be levied on member institutions when the balance of the Fund drops below 70% of the target fund size. On the other hand, a rebate will be paid when the balance of the Fund exceeds 115% of the target fund size.

Coverage limit

16. Question has been raised on why the coverage limit is set at \$100,000. The Administration's explanation is that the proposed limit has taken into account the industry's concern on the need to keep the cost down and to minimize moral hazard. At this protection level, 84% of depositors will be fully protected while 16% of deposits by value will be covered. The proposed limit is also consistent with the priority claim limit under section 265 of the Companies Ordinance (Cap. 32), which provides that a depositor is entitled to receive priority in the repayment of his aggregate deposits, up to a limit of \$100,000, in the winding up of a bank. Aligning the coverage limit of DPS with the priority claim limit will ensure that DPS can take over an equivalent amount of priority claim from each depositor to whom it has paid compensation. This is an essential feature aimed at reducing the cost of DPS. As the target fund size is expected to be built up within five years, this will mean that the central rate of contribution payable by banks will be set at 0.08% of relevant deposits per annum during the fund built-up period, after which the rate will be reduced to 0.01% per annum. The aggregate amount of annual contributions payable by banks will be \$390 million during the fund built-up period and \$54 million thereafter.

17. Members generally consider the coverage limit relatively low and enquired about the changes in percentages of depositors and value of deposits to be covered as well as the costs to banks if the proposed limit is increased from \$100,000 to \$150,000 and \$200,000 respectively. In this connection, the Administration has provided the following figures showing the effects of an increase of the coverage limit from \$100,000 to \$150,000 or \$200,000 -

Coverage Limit (HK\$)	Percentage of depositors fully protected	Percentage of value of deposits covered	Target fund size required (HK\$ billion)	Total annual contributions payable by banks (HK\$ million)	
				During fund build-up period	After fund build-up period
100,000	84%	16%	1.65	390	54
150,000	88% (+4%)	21% (+5%)	2.05 (+24%)	484 (+24%)	66 (+24%)
200,000	90% (+6%)	24% (+8%)	2.39 (+45%)	564 (+45%)	77 (+45%)

18. According to the Administration, any proposal to increase the coverage limit should be accompanied by a corresponding adjustment to the priority claim limit, otherwise DPS will be exposed to an unacceptably high risk of loss. Besides, to increase the priority claim limit will affect interest of other unsecured creditors. Even if the coverage limit of DPS and the priority claim limit were to be adjusted correspondingly, the Administration has to weigh the costs and benefits of doing so. As shown in the above table, raising the coverage limit to \$150,000 or \$200,000 will increase the cost of DPS markedly without bringing significant additional numbers of depositors within the scope of protection. Moreover, the higher the coverage limit is, the greater the risk of

moral hazard becomes. Given the need to keep the cost low and to minimize moral hazard, the Administration considers it more appropriate to set the coverage limit at \$100,000.

19. Question has been raised on whether consideration will be given to linking the coverage limit to inflation. Such an automatic adjustment system will prevent erosion of the coverage limit by inflation and obviate the need for legislative amendment to adjust the coverage limit each time. According to the Administration, coverage limit is the most important feature of a deposit insurance system since it affects not only the effectiveness of the system but also its costs and the related level of moral hazard. An automatic adjustment system can create uncertainty for the banking industry because banks will find it more difficult to carry out financial planning while depositors may also be confused as to what the prevailing coverage limit is. Besides, inflation alone is not the right index and other factors such as growth in real Gross Domestic Product, change in savings behaviour as well as the pace of financial innovation should also be taken into account. However, some of these factors are difficult to quantify, let alone being reduced into intelligible language in the legislation.

20. At members' request, the Administration undertakes to relay to the Board after its establishment the need for practice directions for banks so that depositors will be made aware of the extent of coverage of their deposits.

21. Question has been raised on the rationale for putting the definition of "protected deposit", which forms the basis of DPS, under Schedule 1 of the Bill with other exemptions. Given the importance of the definition, members consider it necessary for the Administration to include the definition in the principal legislation while listing the exemptions in Schedule 1. The Administration agree to such an approach and will move CSAs to this effect.

Investment of the Fund

22. To ensure that the Fund is well managed and readily available to cover losses as they arise, the Bill proposes that it should be allowed to invest only in deposits with the Exchange Fund, Exchange Fund Bills, US Treasury Bills and foreign exchange and interest rate contracts which are necessary for hedging purposes. Another cardinal principle is that the Fund should not be placed with banks which it seeks to protect. Members however consider that internal auditing for investment of the Fund may be necessary. Since the Board is required to perform functions through HKMA under the DPS legislation, the Administration will propose to the Board the desirability of engaging the HKMA's Internal Audit Division to provide internal audit services to the Board.

Compensation

23. The Bill proposes that the Board shall, upon receipt of a written notice of HKMA's decision, make compensation to depositors. It is also empowered to make interim payment to depositors within a short period to help to relieve the cash flow problems of depositors caused by a bank failure. While agreeing that compensation

should be paid out as soon as possible, members stress the need for contingency arrangements, such as the retrieval of necessary information and the provision of enquiry services to the public, to avoid possible confusion in the event of a bank failure. According to the Administration, the Board will issue a press release to inform the depositors that payout under DPS has been triggered and how they can contact the Board. A communication centre will also be set up to answer queries and provide help to the depositors.

24. Members note that under the Bill, if a depositor holds deposit in a client account, the client, but not the depositor, is entitled to compensation from the Fund. Concern has been raised that the provision may only cover the situation where the client is the only person entitled to the deposit in a client account. However, there may be situations where persons who are not clients of the solicitor are entitled to the deposit in the client account. For instance, money held by a solicitor in connection with his practice as stakeholder may be paid into a client account. There may also be office money resulting from an unsplit receipt in the client account. Doubt has been cast on the propriety of entitling the client to compensation in respect of these funds. Since the funds held by a law firm as stakeholder have yet to be vested in the client, the Administration agrees that it is inappropriate to entitle the client to compensation in respect of these funds. To this end, CSAs will be moved such that the law firm, rather than the client, will be entitled to compensation in respect of the money held as stakeholder.

Deposit Protection Appeals Tribunal

25. The Bill proposes to establish an independent Deposit Protection Appeals Tribunal to hear appeals from depositors and Scheme members against the decisions of the Board and HKMA relating to -

- (a) entitlement of compensation under DPS;
- (b) application for exemption from participation in DPS; and
- (c) amount of contributions payable by a Scheme member.

Such an appeal mechanism however is not applicable to the supervisory ratings assigned by HKMA.

26. Noting that the proposed Tribunal is modelled after the Securities and Futures Appeals Tribunal (SFAT) established under the Securities and Futures Ordinance (Cap. 571), question has been raised on the rationale behind such an arrangement given the much narrower scope of responsibilities of the Tribunal as compared to that of SFAT. The Administration explains that although the scope of responsibilities of the Tribunal is not as broad as that of SFAT, the Tribunal may need to deal with chaotic situations in the event of a bank crisis and appropriate powers need to be made available to it to enable effective discharge of its functions. It is also pointed out that there is no clear provision in the Bill to allow a case to be remitted to the Tribunal after the Court of Appeal rules against a determination of the Tribunal. In this connection, the Administration will move CSAs to provide for the remittance.

Confidentiality

27. The Bill requires that a person shall preserve and aid in preserving the secrecy of information obtained in the course of performing his function under the DPS legislation. According to the Administration, there are strong grounds for imposing a secrecy obligation on the relevant person. Under the DPS legislation, the Board may require Scheme members to submit information, including returns showing the amount of the relevant deposits maintained with the Scheme, as it may require for the performance of its functions under the Bill. It will also have access to sensitive information, such as the supervisory ratings of individual banks assigned by HKMA from time to time. In addition, the Board and the persons appointed as agents of the Board or authorized by the Board will have access to the premises and records, including individual depositors' information, of a failed Scheme member. It will be in the public interest that such proprietary information of the Scheme members and their customers will not be disclosed without good cause. The proposed secrecy obligation is also in line with the long-standing duty of confidentiality owed by banks to their customers. If a deposit protection scheme fails to recognize and protect well-recognized rights to privacy enjoyed by customers and banks internationally, this will not only turn banks away from Hong Kong, but also discourage depositors, both local and overseas, from doing business with banks in Hong Kong. Besides, the proposed secrecy obligation is drafted along the lines of other ordinances which have a similar provision.

28. In the absence of specific provisions on the extent to which a person shall aid in preserving secrecy under the Bill as well as precedents on the application of the secrecy obligation in other ordinances, concern has been raised on how a person can avoid contravening such a requirement and the liability in the event of contravention. To this end, members propose that a relevant person should only be expected to take reasonable care to aid in preserving secrecy.

29. The Administration's explanation is that according to the advice of the Prosecution Division of the Department of Justice, the proposed amendment may have the unintended effect of lowering the threshold of proof by the Prosecution. If the words "take reasonable care" is added before the duty to "aid in preserving secrecy", the provision will indeed be clear that a relevant person's duty is to take reasonable care to aid in preserving secrecy. However, with this amendment to clarify the duty, the Prosecution will probably only need to prove the failure of a relevant person in taking reasonable care in prosecuting such a case. In other words, the Prosecution may no longer need to prove "intention" or "recklessness". In law, the standard of proof for failure to take reasonable care is similar to that for proving "negligence". This is lower than the standard of proof for "intention" or "recklessness" which will otherwise need to be established by the Prosecution if the provision in question has not been amended.

30. To address members' concern without compromising the effectiveness of the secrecy provision in the Bill, the Administration proposes to amend the Bill such that the obligation to preserve or aid in preserving is removed but a relevant person shall not suffer or permit any person to have access to any confidential information that he obtains in performing functions under the DPS legislation. The proposed amendments

will have a wider scope of application covering situations where the confidential information is not in the possession, custody or control of a relevant person. The relevant person has a duty not to suffer or permit any third party to have access to the confidential information that comes to his knowledge in the performance of any function under the Bill regardless whether the information is in his possession, custody or control. Similar provisions can also be found in the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the Electronic Transactions Ordinance (Cap. 553). Members generally accept the proposal and the Administration will move CSAs to this effect.

Administrative costs charged to the Fund

31. The Bill proposes that the Board shall perform its functions through HKMA, and that the cost incurred by HKMA in the administration of DPS will be recovered from the Fund under the “user pays principle”. The proposal has taken into account the industry’s concern on the need to keep the administrative structure of the Board lean and efficient on the one hand and to reduce its running cost on the other. While having no strong views on outsourcing the day-to-day administration of DPS to HKMA, members note with concern that officers from HKMA are not expected to work full time on DPS lest this may undermine the operation of the Scheme. They also query the high estimated annual administration cost of the Board in normal times when there are no bank failures.

32. The Administration’s explanation is that in line with the advice of the Canada Deposit Insurance Corporation commissioned to help develop an effective payout mechanism for DPS in Hong Kong, the Board should develop a “virtual organization” comprising a small number of staff, supplemented by a network of service suppliers such as audit firms to ensure that appropriate resources are available to make timely and accurate compensation payments while avoiding the cost of retaining resources that are unnecessary between bank failures. It is therefore decided that the Board will only need to be supported by a small core of staff to carry out the following functions -

- (a) assess and collect contributions from Scheme members;
- (b) manage the Fund;
- (c) monitor compliance of member banks in respect of disclosure of protection status and whether a financial product is protected by DPS;
- (d) manage and co-ordinate with service providers as part of contingency planning;
- (e) maintain and operate the payout information technology system; and
- (f) promote understanding of DPS through publicity campaign.

Given the limited functions of the Board, it is probable that HKMA staff assigned to assist the Board may need to spend more of their time, say 50%, on DPS matters in the

initial years of operation. After that, it is expected that HKMA staff will only need to spend, say 40%, of their time on DPS related matters. It is further assumed that the Board will employ a legal counsel of its own to ensure impartiality. Based on the above assumptions, the administration cost, including staff cost, office rental, system maintenance, retainer fees for service providers, public education, is estimated at around \$6 to \$7 million per annum in normal times.

33. As regards the estimated administration cost to be incurred by the Board in the case of failure of a bank, the Administration's explanation is that it is extremely difficult to make any accurate forecast at this stage. The actual figure will depend on a host of factors, including the number of depositors of the failed bank, the complexity of its operation, the reliability of the bank's information technology (IT) systems and records, the level of professional fees payable to various service providers such as the payout agent and external legal advisers etc. On the assumption that a medium-sized bank with about 200 000 depositors fails, and that the IT systems and records of the bank are in reasonably good shape, it is expected that a team of about 60 to 80 accountants will be adequate to handle the payout process. The annual administration cost of the Board will increase to approximately \$40 to \$50 million. However, a larger team of staff will be required and the administration cost will be higher under circumstances such as the IT systems and records of the bank are not in shape and thus cannot be relied upon by the Board in determining individual depositors' entitlement to compensation.

Committee Stage amendments

34. A set of CSAs to be moved is at **Appendix IV**.

Recommendation

35. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 28 April 2004.

Advice sought

36. Members are requested to support the recommendation of the Bills Committee at paragraph 34 above.

**Bills Committee on
Deposit Protection Scheme Bill**

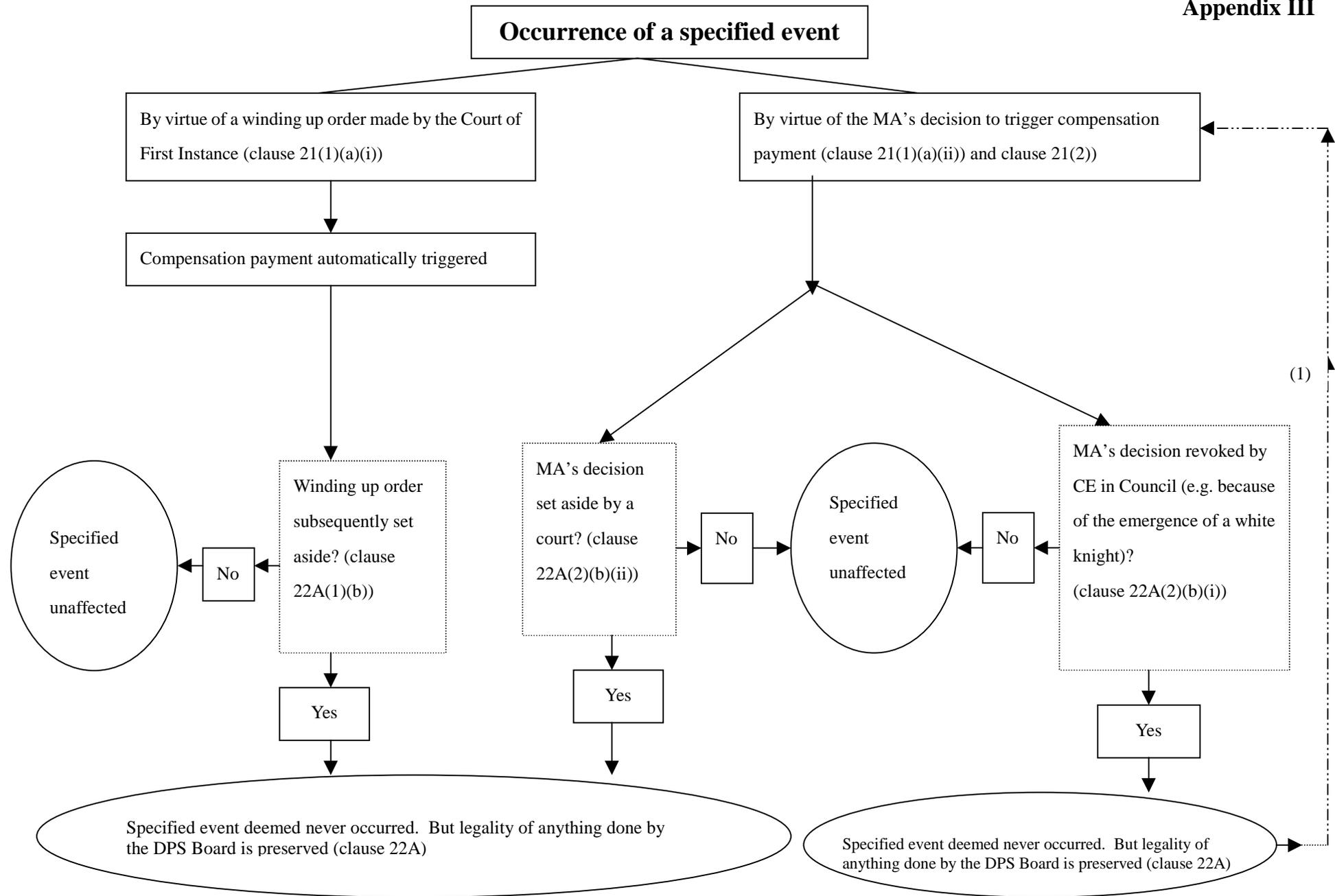
Membership list

Chairman	Hon Albert HO Chun-yan
Members	Dr Hon Eric LI Ka-cheung, GBS, JP Dr Hon David LI Kwok-po, GBS, JP Hon Fred LI Wah-ming, JP Hon NG Leung-sing, JP Hon Margaret NG Hon Bernard CHAN, JP Hon CHAN Kam-lam, JP Hon SIN Chung-kai Hon Jasper TSANG Yok-sing, GBS, JP Hon Ambrose LAU Hon-chuen, GBS, JP Hon Abraham SHEK Lai-him, JP Hon Audrey EU Yuet-mee, SC, JP (Total : 13 Members)
Clerk	Miss Becky YU
Legal Adviser	Mr KAU Kin-wah
Date	18 July 2003

Appendix II

List of organizations which have made written and/or oral representations to the Bills Committee

- (a) Consumer Council
- (b) DTC Association
- (c) Hong Kong Association of Banks
- (d) Hong Kong Society of Accountants
- (e) Securities & Futures Commission
- (f) Law Society of Hong Kong
- (g) Hong Kong Bar Association



(1) If subsequent developments justify re-triggering of MA's decision (e.g. the rescue by the white knight eventually fell through), MA's power under clause 21(1)(a)(ii) and clause 21(2)) are exercisable.

DEPOSIT PROTECTION SCHEME BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services
and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1) -</p> <p>(i) by deleting the definition of "applicant" and substituting -</p> <p style="padding-left: 40px;">"applicant" (申請人) means a person who applies to the Tribunal under section 39(1), (2) or (3) for a review of -</p> <p style="padding-left: 80px;">(a) a decision, or an assessment, of the Board;</p> <p style="padding-left: 80px;">or</p> <p style="padding-left: 80px;">(b) a decision of the Monetary Authority;"</p> <p>(ii) in the definition of "bank", by deleting everything after "means a" and substituting -</p>

"company -

- (a) that holds a valid banking licence; or
- (b) the banking licence of which is for the time being suspended under section 24 or 25 of the Banking Ordinance (Cap. 155);";

(iii) in the definition of "bare trustee" -

- (A) by deleting "protected deposit" and substituting "deposit or portion thereof";
- (B) by adding "or that portion" after "the deposit" wherever it appears;

(iv) in the definition of "director", by deleting ", in relation to a Scheme member or a bank,";

(v) by deleting the definition of "practicable";

- (vi) by deleting the definition of "protected deposit" and substituting -
- "protected deposit" (受保障存款) means a deposit denominated in any currency and maintained with a Scheme member but does not include those specified in section 1 of Schedule 1;"
- (vii) in the definition of "臨時清盤人", by deleting "人。" and substituting "人;"
- (viii) by adding -
- "authorized institution" (認可機構) has the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155);
- "client account" (客戶帳戶), in relation to a depositor, means an account maintained by the

depositor with a bank
for the purpose of
holding money held by
the depositor for a
client of the depositor,
whether or not other
money may be held in the
account;

"function" (職能) includes a
power and a duty;

"holding company" (控股公司)
means a holding company
within the meaning of
section 2 of the
Companies Ordinance
(Cap. 32);

"information system" (資訊系統)
has the meaning assigned
to it by section 2(1) of
the Electronic
Transactions Ordinance
(Cap. 553);

"relevant deposit" (有關存款)
means a deposit
denominated in any
currency and maintained

with a Scheme member but does not include those specified in section 1A of Schedule 1;

"subsidiary" (附屬公司) means a subsidiary within the meaning of section 2 of the Companies Ordinance (Cap. 32);".

(b) By adding -

"(1A) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.

(1B) If a deposit, or portion thereof, held by a depositor in a client account for a client is also held by the depositor as a trustee or bare trustee under a trust or bare trust, the deposit or portion is, for the purposes of this Ordinance, taken as being held by the depositor for the client and not as such trustee or bare trustee.".

(c) In subclause (2), by deleting "語族" and substituting "根".

4

(a) By deleting subclause (1)(c) and substituting -

"(c) not fewer than 4 and not more than 7 other members appointed by the Chief Executive from among persons who, either because of their experience in finance, accounting, banking, law, administration, information technology or consumer affairs, or because of their professional or occupational experience, appear to the Chief Executive to be suitable for the appointment."

(b) In subclause (2) -

(i) by deleting "A public officer is" and substituting "The following are";

(ii) by deleting everything after "under" and substituting -

"subsection (1)(c) -

(a) a public officer;

(b) a person who is a director, or an employee, of -

- (i) an authorized institution;
- (ii) a holding company of an authorized institution;
- (iii) a subsidiary of such a holding company; or
- (iv) a subsidiary of an authorized institution."

(c) In subclause (3), by deleting "non-executive" and substituting "appointed".

5(g) By deleting "the assets of the failed" and substituting ", or out of the assets of, the".

7(d) By deleting everything after "agreement" and substituting -

"or arrangement -

- (i) with the liquidator or provisional liquidator of a failed Scheme member, or with any other person,

in respect of its claim against the assets of the failed Scheme member; or

- (ii) with any person in respect of its claim against a Scheme member, in relation to which it is deemed under section 22A that a specified event never occurred;".

New

By adding -

"7A. Board may issue guidelines

(1) The Board may issue, for the guidance of banks or depositors, guidelines not inconsistent with this Ordinance, indicating the manner in which it proposes to perform its functions under this Ordinance.

(2) The Board shall publish a guideline issued under this section in the Gazette.

(3) The Board may amend or revoke a guideline issued under this section. Subsection (2) applies to the amendment or revocation of a guideline in the same way as it applies to the issue of a guideline.

(4) A person does not incur a civil or criminal liability only because the person has contravened a guideline issued under this section. If in any legal proceedings the court is satisfied that such a guideline is relevant to determining a matter that is in issue in the proceedings -

(a) the guideline is admissible in evidence in the proceedings; and

(b) proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

(5) A guideline issued under this section is not subsidiary legislation.

(6) In this section, "court" (法院) includes a magistrate and the Tribunal."

11(1) By deleting "during the validity of its banking licence." and substituting -
"until -

- (a) the company ceases to be a bank by virtue of section 18(3) of the Banking Ordinance (Cap. 155); or
- (b) its banking licence is revoked under that Ordinance."

12

- (a) In subclause (4) (c) -
 - (i) by deleting "less" and substituting "in all material respects narrower, and lower,";
 - (ii) by deleting "those deposits were protected by the Scheme" and substituting "the bank were not exempted".
- (b) In subclause (6), by deleting "可行" and substituting "切實可行的".
- (c) In subclause (10) -
 - (i) by adding ", as soon as practicable after the relevant time," after "shall";
 - (ii) in paragraph (c) (iii), by deleting "under" and substituting "by".
- (d) By adding -

"(12) In subsection (10), "relevant time" (有關時間) -

(a) in relation to the bank's depositors, means the time when the bank receives the notice of decision of the Board given under subsection (6);

(b) in relation to a person who is not already a depositor of the bank but has informed the bank that he intends to make a deposit with the bank, means the time when the person so informs the bank."

13(2)(b) By deleting "the assets of failed" and substituting ", or out of the assets of,".

14 (a) By deleting subclause (1).

(b) In subclause (3), by deleting "可行" and substituting "切實可行的".

(c) By adding -

"(3A) A Scheme member shall pay to the Board, in the prescribed manner and within the prescribed period, the amount of contribution assessed by the Board."

(d) By deleting subclause (4).

(e) In subclause (5) -

(i) by deleting "(1)" and substituting "(3A)";

(ii) in paragraph (b) -

(A) by adding "to the Board" after "pay";

(B) by adding "in the prescribed manner and" before "within".

(f) By adding -

"(5A) The Board shall, on collecting any contribution or late payment fee from a Scheme member, pay it into the Fund."

15(g) By adding "or in relation to" after "by".

16 By adding -

"(1A) As soon as practicable after the commencement of this section, the Board shall submit to the Financial Secretary, for

his approval, estimates of the income and expenditure of the Fund for the first financial year of the Fund."

- 20
- (a) By renumbering the clause as clause 20(1).
 - (b) In subclause (1)(d) -
 - (i) by adding "subject to subsection (2)," before "exchange";
 - (ii) by deleting "and" and substituting "contracts or";
 - (iii) by deleting ", which are necessary for hedging purposes".
 - (c) By adding -
 - "(2) The Board shall not place, or invest, money of the Fund in exchange rate contracts or interest rate contracts except for hedging purposes."
- 21
- (a) In subclause (1)(a) -
 - (i) by adding "subject to section 22A," before "a specified";
 - (ii) in subparagraph (ii), by deleting "subject to section 22(5),".

(b) In subclause (2)(a), by deleting "a Scheme member in respect of which" and substituting "in respect of a Scheme member".

(c) By adding -

"(6) If a specified event has occurred in relation to a Scheme member by virtue of subsection (1)(a)(ii), the fact that -

(a) in the case where subsection (2)(a)(i) applies in relation to the occurrence, the appointment of the Manager is reversed by the Chief Executive in Council under section 53(1)(i) of the Banking Ordinance (Cap. 155) or is set aside by a court; or

(b) in the case where subsection (2)(a)(ii) applies in relation to the occurrence, the order appointing the

provisional liquidator

is discharged,

does not affect the operation of

subsection (1)(a)(ii) in relation to the

Scheme member."

22

(a) In subclause (1), by deleting "可行" and substituting "切實可行的".

(b) In subclause (4), by deleting "may, on" and substituting "shall, as soon as practicable after".

(c) By adding -

"(4A) In determining whether to confirm or revoke under subsection (4) the Monetary Authority's decision, the Chief Executive in Council shall have regard to -

(a) the interests of the depositors of the Scheme member;

(b) the general stability and effective working of the banking system in Hong Kong; and

(c) such other factors as the Chief Executive in

Council considers
appropriate in the
public interest.".

(d) By deleting subclause (5).

New

By adding -

**"22A. Specified event deemed
never occurred under
certain circumstances**

(1) Subject to subsection (3), if -

- (a) a specified event has
occurred in relation to a
Scheme member by virtue of
section 21(1)(a)(i); and
- (b) the winding-up order in
respect of the Scheme member
is set aside by a court,

it is deemed, with effect on and after the
date on which the setting aside takes
effect, that the specified event never
occurred.

(2) Subject to subsection (3), if -

- (a) a specified event has
occurred in relation to a
Scheme member by virtue of
section 21(1)(a)(ii); and

(b) the Monetary Authority's decision under section 21(2) that compensation should be paid to the depositors of the Scheme member -

(i) is revoked by the Chief Executive in Council under section 22(4); or

(ii) is set aside by a court,

it is deemed, with effect on and after the date specified in the notice of revocation as the date on which the revocation takes effect, or the date on which the setting aside takes effect, that the specified event never occurred and that the Monetary Authority had never served on the Board a notice of that decision.

(3) Subsection (1) or (2) does not operate to prejudice the legality and effect of anything done in accordance with this Ordinance pursuant to the specified event before the effective date referred to in that subsection."

- 24 (b)
- (a) By adding "a reference to" after "where".
 - (b) By adding "by virtue of paragraph (a)" after "the deposit".
 - (c) By deleting "of a" and substituting "of that".

- 25
- (a) In subclause (1) -
 - (i) in paragraph (a), by deleting "or";
 - (ii) in paragraph (b) -
 - (A) by deleting "or agent, or in a client account,";
 - (B) by deleting the comma at the end and substituting "; or";
 - (iii) by adding -
 - "(c) a depositor holds in a client account for the person as the depositor's client,";
 - (iv) by deleting "有關" and substituting "所涉".
 - (b) In subclause (3), by deleting everything after "failed Scheme member" where it first appears and substituting -
 - "in respect of which -

(a) in the case of the date of the specified event within the meaning of section 21(1)(b)(i), a right of set off exists in the winding up of the failed Scheme member;

(b) in the case of the date of the specified event within the meaning of section 21(1)(b)(ii), a right of set off would have existed in the winding up of the failed Scheme member had a winding-up order been made in respect of it on that date,

plus or minus, as the case may be, the interest accrued on the deposits, or the liabilities, calculated up to and including the quantification date."

27

(a) In the heading, by deleting ", **agencies**".

(b) By deleting subclauses (3) and (4).

- (c) In subclause (5), by adding "for a client" after "account".
- (d) In subclause (6), by deleting ", principal".

29

- (a) By adding before subclause (1) -
 - "(1A) If a depositor of a Scheme member or any other person is entitled, in respect of the depositor's protected deposit with the Scheme member, to compensation under this Division, any such compensation shall be paid to the depositor, but not any other person, in accordance with this Ordinance."
- (b) In subclause (2), by deleting "received payment that is made" and substituting "been paid an amount of compensation".

30

- (a) In subclause (1)(a), by deleting "可行" and substituting "切實可行的".
- (b) In subclause (1)(b)(i) -
 - (i) by adding ", for the purpose of performing its functions," after "may";
 - (ii) by deleting "produce to the Board documents" and substituting

"supply the Board with information and documents".

(c) In subclause (7), by adding "切實" before "可行".

31

(a) In subclause (1), by deleting "This section" and substituting "Subsection (2)".

(b) In subclause (2) -

(i) by deleting "If subsection (1) applies, the" and substituting "The";

(ii) by deleting everything after "under" and substituting -

"section 30(5) -

(a) as if the arrangement or any part thereof had not been entered into or carried out; or

(b) in such other manner as the Board considers

appropriate to
counteract the
effect of the
arrangement.".

- (c) In subclause (3), in the definition of "relevant date" -
 - (i) in paragraph (a), by deleting "has been" and substituting "is";
 - (ii) in paragraph (b) -
 - (A) by deleting "a petition" and substituting "the petition";
 - (B) by deleting "has been" and substituting "is".

- 34 (a) In paragraph (a), by adding "or" at the end.
- (b) In paragraph (b), by deleting the semicolon and substituting a comma.
- (c) By deleting paragraph (c).

- 35 (a) In subclause (1), by deleting "within a period" and substituting "in a manner, and within a period,".
- (b) In subclause (2) (b) -
 - (i) by adding "to the Board" after "pay";

(ii) by deleting "within a period" and substituting "in a manner, and within a period,".

(c) By deleting subclause (4) and substituting -
" (4) The Board shall, on collecting any such excess or late repayment fee from a depositor, pay it into the Fund.".

36

(a) In subclause (1) -

(i) by adding "of a Scheme member" after "a depositor";

(ii) in paragraph (a) -

(A) by deleting "full extent of that payment" and substituting "extent of the net amount of that payment";

(B) by deleting "on that payment" and substituting "on the net amount of that payment";

(C) by deleting "failed";

(iii) in paragraph (b) -

(A) by deleting "the full" and substituting "in full the net";

(B) by deleting "on that payment" and substituting "on that net amount";

(C) by deleting "out of the assets of the failed Scheme member" and substituting "from, or out of the assets of, the Scheme member".

(b) In subclause (4), by deleting "failed".

(c) In subclause (5) -

(i) by adding "the net amount of" before "a payment";

(ii) in paragraph (a), by deleting "failed";

(iii) in paragraph (b), by deleting "commencement of the winding up of the failed Scheme member" and substituting "winding-up order made by the Court of First Instance";

(iv) in paragraph (c) -

(A) by adding "the net amount of" before "that payment and";

(B) by deleting "on that payment" and substituting "on that net amount".

(d) By adding -

"(7) In this section, "net amount" (淨額), in relation to a payment of compensation made to a depositor of a Scheme member from the Fund, means the amount of the payment less the amount of excess, if any, that is recoverable by the Board from the depositor under section 35(3).".

38

(a) By adding -

"(1A) The function of the Tribunal is to review a decision or assessment the subject of an application under section 39(1), (2) or (3).".

(b) In subclause (2) -

- (i) by deleting "The" and substituting "For the purpose of reviewing a decision or assessment, the";
- (ii) in paragraph (b) -
 - (A) by deleting "Chairman may" and substituting "Financial Secretary may, on the recommendation of the Chairman, ";

(B) by deleting everything after "review" and substituting "the decision or assessment."

(c) By adding -

"(8A) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any reviews of decisions or assessments of the Board or of decisions of the Monetary Authority, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal."

39

(a) In subclause (1), by deleting everything after "may" and substituting "apply to the Tribunal for a review of the decision."

(b) In subclause (2) -

(i) by deleting "request the Board to refer the assessment to the

Tribunal for review" and
substituting "apply to the Tribunal
for a review of the assessment";

(ii) by deleting "to request" and
substituting "to apply for".

(c) In subclause (3), by deleting everything
after "may" and substituting "apply to the
Tribunal for a review of the decision."

(d) In subclause (4) -

(i) by deleting "A request" and
substituting "An application";

(ii) in paragraph (a) -

(A) by deleting "to the Board";

(B) in subparagraphs (i), (ii),
(iii) and (iv), by deleting
"the request" and
substituting "the
application";

(C) by deleting "the Board may"
and substituting "the
Tribunal may".

(e) In subclause (5) -

(i) by deleting "A request" and
substituting "An application";

(ii) in paragraph (a) -

(A) by deleting "to the Monetary Authority";

(B) by deleting "a request" and substituting "an application".

(f) By adding -

"(5A) The Tribunal shall -

(a) deliver to the Board a copy of any application under subsection (1) or (2) that it has received; and

(b) deliver to the Monetary Authority a copy of any application under subsection (3) that it has received.".

(g) In subclause (6) -

(i) by deleting "A request" and substituting "An application";

(ii) by deleting "the request" and substituting "the application".

(h) In subclause (7) -

(i) by deleting "request under subsection (1), (2) or (3)" and substituting "copy of an application delivered under subsection (5A)";

(ii) by deleting "for review".

(i) In subclause (8) -

(i) by adding "do the following" after
"determination to";

(ii) in paragraph (a), by deleting "or"
at the end;

(iii) in paragraph (b), by deleting "的裁
定".

(j) In subclause (11), by adding "切實" before "可
行".

(k) In subclause (14), by deleting "A document"
and substituting "For the purposes of any
proceedings in a court of law, a document".

40

(a) In subclause (1)(a), by deleting "庭" and
substituting "院".

(b) In subclause (3) -

(i) by deleting paragraph (b);

(ii) in paragraph (c), by deleting
"(1)" and substituting "(1)(c)".

43(2)

By deleting everything after "Appeal" and
substituting -

"may, in relation to a determination appealed
against, do the following -

- (a) confirm, vary or set aside the determination;
- (b) remit the matter to the Tribunal with any direction that it considers appropriate."

44 (a) By deleting subclauses (1) and (2) and substituting -

"(1) Except so far as it is necessary for the performance of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, a specified person -

- (a) shall not suffer or permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in the performance of any function under this Ordinance; and

(b) shall not communicate any such matter to any person other than the person to whom such matter relates."

(b) In subclause (3) -

(i) in paragraph (a), by adding "from" before "being";

(ii) in paragraph (f), by deleting "for the purpose of enabling or assisting the Board to perform its functions under this Ordinance;" and substituting "where the disclosure will, in the opinion of the Board, enable or assist the recipient of the information to perform his functions;".

(c) By adding -

"(3A) The Board may attach a condition to any disclosure of information made pursuant to subsection (3)(b), (c), (d), (e), (f) or (j), and shall attach a condition to any disclosure of information made pursuant to subsection (3)(g), that neither -

- (a) the person to whom the information has been disclosed; nor
- (b) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (a),

shall disclose that information to any other person without the consent of the Board."

- (d) In subclause (4), by deleting "person other than the Board" and substituting "other person".
- (e) In subclause (5), by adding "specified" before "person".
- (f) By adding -

"(5A) If a person, knowing that the condition referred to in subsection (3A) has been attached to a disclosure of information made pursuant to subsection (3), contravenes that condition, the person commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months."

(g) By adding -

"(7) In this section, "specified person" (指明人士) means -

- (a) any person who -
 - (i) is or has been -
 - (A) a member of the Board;
 - (B) a related person of the Board; or
 - (C) a person employed by or assisting

a related
person of
the
Board;
and

(ii) performs or
has performed
any function
under this
Ordinance; or

(b) the Monetary Authority,
or a person appointed
under section 5A(3) of
the Exchange Fund
Ordinance (Cap. 66) to
assist the Monetary
Authority."

46 (a) In subclause (2), by deleting "protected"
where it twice appears and substituting
"relevant".

(b) In subclause (5) -

(i) in paragraph (a) -

(A) by adding ", or portion
thereof," after "deposit";

(B) by adding "or" at the end;

- (ii) by deleting paragraph (b);
- (iii) in paragraph (c), by adding ", or portion thereof," after "deposit".

(c) In subclause (7), by adding ", without reasonable excuse," before "fails".

49

(a) In subclause (1) -

- (i) by deleting paragraph (a) and substituting -

"(a) prescribing the requirements in accordance with which Scheme members shall maintain those information systems and other records to which the Board would, on the occurrence of a specified event, have access under section 30(2)(a);";

- (ii) in paragraphs (b) and (e), by deleting "specifying" and substituting "prescribing";
- (iii) by deleting paragraph (c) and substituting -

"(c) prescribing the manner
in which -

(i) contributions
or late
payment fees
are to be paid
by Scheme
members; or

(ii) rebates or
refunds of
contributions
are to be paid
to Scheme
members;"

(iv) by deleting paragraph (d).

(b) In subclause (3) -

(i) by deleting "that contains" and
substituting "or other records
that contain";

(ii) in paragraph (a) -

(A) by adding ", or portion
thereof," after "deposit";

(B) by adding "or" at the end;

(iii) by deleting paragraph (b);

(iv) in paragraph (c), by adding ", or
portion thereof," after "deposit".

50(a) By deleting "requests" and substituting
"applications".

51 (a) In subclause (1), by deleting "protected" and
substituting "relevant".

(b) In subclause (2) -

(i) in paragraph (a), by deleting
"protected" and substituting
"relevant";

(ii) in paragraph (g), by deleting
everything after "requirement" and
substituting "to apply to the
Tribunal for a review of the
decision;"

(iii) in paragraph (h), by deleting "a
request" and substituting "an
application".

52(2) By adding "切實" before "可行".

Schedule 1 (a) By deleting the heading and substituting
"DEPOSITS SPECIFIED FOR PURPOSES OF
DEFINITIONS OF "PROTECTED DEPOSIT" AND
"RELEVANT DEPOSIT" IN SECTION 2(1) OF THIS
ORDINANCE".

(b) By deleting "& Sch. 4".

Schedule 1 By deleting section 1 and substituting -

"1. For the purpose of the definition of "protected deposit" in section 2(1) of this Ordinance, the following deposits are specified -

- (a) a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
- (b) a deposit the repayment of which is secured either in whole or in part on the assets of the Scheme member;
- (c) a bearer instrument;
- (d) a deposit taken by the Scheme member at any of its offices outside Hong Kong;
- (e) a deposit held for the account of the Exchange Fund;
- (f) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a

non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;

- (g) a deposit held by a depositor as a bare trustee for an excluded person, or in a client account for an excluded person as the depositor's client, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;
- (h) a deposit held by a depositor as a trustee for an excluded person only.

1A. For the purpose of the definition of "relevant deposit" in section 2(1) of this Ordinance, the following deposits are specified -

- (a) a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
- (b) a deposit the repayment of which is secured either in whole or in part on the assets of the Scheme member;
- (c) a bearer instrument;
- (d) a deposit taken by the Scheme member at any of its offices outside Hong Kong;
- (e) a deposit held for the account of the Exchange Fund;
- (f) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in

partnership), the portion of the deposit attributable to the excluded person's share in the deposit."

Schedule 1,
section 2

(a) By deleting the definitions of "authorized institution", "holding company" and "subsidiary".

(b) In the definition of "excluded person", by deleting paragraph (e) and substituting -

"(e) in relation -

(i) to the definition of "protected deposit" in section 2(1) of this Ordinance for the purposes of Part 5 of this Ordinance, an officer of the Scheme member or its related company on -

(A) the date immediately preceding the date on which a Manager within the meaning of section 2(1) of

the Banking
Ordinance (Cap.
155) is appointed
in respect of the
Scheme member under
section 52 of that
Ordinance; or

(B) the date on which
the petition for
the winding up of
the Scheme member
is presented,

whichever is the
earlier;

(ii) to the definition of
"protected deposit" in
section 2(1) of this
Ordinance for any other
purpose and to the
definition of "relevant
deposit" in that
section, an officer of
the Scheme member or its
related company;".

(c) In the definition of "non-excluded person",
by deleting paragraphs (a) and (b) and
substituting -

"(a) in relation to the definition of
"protected deposit" in section
2(1) of this Ordinance for the
purposes of Part 5 of this
Ordinance, a person who is not an
excluded person within the meaning
of paragraph (a), (b), (c), (d) or
(e)(i) of the definition of
"excluded person";

(b) in relation to the definition of
"protected deposit" in section
2(1) of this Ordinance for any
other purpose and to the
definition of "relevant deposit"
in that section, a person who is
not an excluded person within the
meaning of paragraph (a), (b),
(c), (d) or (e)(ii) of the
definition of "excluded person";".

(d) In the definition of "related company", in
paragraph (c), by deleting the semicolon and
substituting a full stop.

Schedule 1,
section 3

By deleting "section 1(b)(i) and (ii)(A) and (c)(i) and (ii)" and substituting "sections 1(f) and (g) and 1A(f)".

Schedule 2,
section 2

(a) In the heading, by deleting "**non-executive**" and substituting "**appointed**".

(b) In subsections (1) and (3), by deleting "A non-executive" and substituting "An appointed".

(c) In subsection (2), by deleting "a non-executive" and substituting "an appointed".

(d) By adding -

"(3A) If the Chairman of the Board is absent from Hong Kong or is for any other reason unable to perform the functions of his office as Chairman, the Chief Executive may appoint another appointed member of the Board to be the temporary Chairman in his place during his absence or incapacity.".

(e) In subsection (4) -

(i) by deleting "any non-executive" and substituting "an appointed";

(ii) by deleting "including" and substituting "other than";

(iii) by deleting "exercise the powers or discharge the duties" and substituting "perform the functions";

(iv) by deleting "or Chairman, as the case may be" where it first appears;

(v) by deleting "or Chairman, as the case may be,".

(f) By adding -

"(5) If a person is appointed as the temporary Chairman, or a temporary member, of the Board, the person may perform all the functions of the Chairman, or member, in whose place the person is appointed.".

Schedule 2,
section 4

By deleting paragraph (b) and substituting -

"(b) has become -

(i) a public officer; or

(ii) a director or an employee
of -

(A) an authorized
institution;

(B) a holding company of an
authorized institution;

- (C) a subsidiary of such a holding company; or
- (D) a subsidiary of an authorized institution,".

Schedule 2,
section 5

- (a) In subsection (1), by deleting ", or the person acting as the Chairman,".
- (b) In subsection (2), by deleting "5" and substituting "4".
- (c) By deleting subsection (4) and substituting -
 - "(4) At a meeting of the Board -
 - (a) the Chairman of the Board shall preside;
 - (b) each member of the Board present has one vote; and
 - (c) every question for decision shall be determined by a majority of votes of the members of the Board present and, in the case of an equality of votes, the Chairman of the Board has a casting vote."

Schedule 2,
section 6

By deleting "by a majority of the members of the Board" and substituting "in writing by all the members of the Board present in Hong Kong (being not less than the number required to constitute a majority of the Board)".

Schedule 2,
section 7(b)

By deleting "two-third" and substituting "two-thirds".

Schedule 3,
section 2

(a) In subsection (1), by adding "or appointed to act in relation to any specified review" after "years".

(b) In subsection (2), by deleting everything after "for reappointment" and substituting a full stop.

Schedule 3,
section 4(1)

(a) By deleting "Chairman of the Tribunal" and substituting "Financial Secretary".

(b) By deleting "Chairman" and substituting "Financial Secretary".

Schedule 4

By deleting "& Sch. 1".

Schedule 4,
section 1

(a) In subsection (1), by deleting the definition of "balance of protected deposits" and substituting -

"amount of relevant deposits" (有關存款款額), in relation to a Scheme member, does not, subject to subsection (2), include -

(a) where -

- (i) the amount of one or more relevant deposits held by one person, as a depositor, with the Scheme member in his own right exceeds \$100,000;
- (ii) the amount of one or more relevant deposits held by a depositor with the Scheme member as a bare trustee under one bare trust exceeds \$100,000;
- (iii) the amount of the relevant deposit

held by a depositor
with the Scheme
member in one
client account
exceeds \$100,000;
or

(iv) the amount of one
or more relevant
deposits held by a
depositor with the
Scheme member as a
trustee under one
trust exceeds
\$100,000,

the amount in excess of
\$100,000; or

(b) any amount of interest
accrued on relevant
deposits."

(b) By deleting subsection (2) and substituting -

"(2) In the definition of "amount
of relevant deposits" -

(a) a reference to a
relevant deposit
includes a portion of
the deposit;

(b) for the purposes of paragraph (a)(i) of that definition, if a depositor consists of 2 or more persons -

(i) subject to subparagraph (ii), each of the persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the Board;

(ii) in the case where the persons carry on business in partnership, those persons are a single and continuing body of

persons as
distinct from
the persons
who may from
time to time
be the members
of the
partnership;
and

(c) for the purposes of
paragraph (a)(ii) and
(iv) of that definition,
if the depositor
consists of 2 or more
persons, those persons
are a single and
continuing body of
persons as distinct from
the persons who may from
time to time be the bare
trustees or trustees.".

Schedule 4,
section 2(1)

By deleting "balance of protected" and
substituting "amount of relevant".

Schedule 4,
section 3

- (a) In subsection (5), by deleting "balance of protected" and substituting "amount of relevant".
- (b) In subsection (6) -
 - (i) by adding "such portion of" after "particular year is";
 - (ii) by deleting everything after "subsection (5)" where it secondly appears and substituting "that such amount of excess bears to such aggregate amount."

Schedule 4,
section 4(3)

By deleting "balance of protected" and substituting "amount of relevant".

Schedule 4,
section 5

- (a) In subsection (3) -
 - (i) by adding "a specified portion of" after "year is";
 - (ii) by deleting everything after "to that year" and substituting a full stop.
- (b) By adding -
 - "(5) In this section, "specified portion" (指明部分), in relation to the amount of build-up levy that would have been payable for a year, means the

portion that the aggregate amount of surcharges payable by all Scheme members for that year, calculated in accordance with subsection (4), bears to the aggregate amount of build-up levies that would have been payable by all Scheme members for that year, calculated in accordance with subsection (4) (a) (i).".

Schedule 4, section 6(1) (a) and (2) By deleting "balance of protected" and substituting "amount of relevant".

Schedule 4, section 8 (a) In subsection (2) -

- (i) by adding "such portion of" before "the aggregate amount";
- (ii) by deleting everything after "subsection (3)," and substituting "that the amount of net contribution by the Scheme member during the relevant period bears to the aggregate of the amount of net contribution by each of the Scheme members during the same period.".

(b) By deleting subsection (4) and substituting -

"(4) In this section -

"amount of net contribution" (供款淨額),
in relation to a Scheme member
during a period, means the amount
of contribution paid by the Scheme
member during the period less the
amount of rebate received by the
Scheme member during that period;

"relevant period" (有關期間) means the
period of 10 years immediately
preceding the year in which the
rebate is required to be made by
the Board or the period since the
commencement of this Schedule,
whichever is the shorter."

Schedule 5,
section 1

(a) In paragraph (a) -

(i) by deleting the proposed section
265(1)(db)(iii);

(ii) in the proposed section
265(1)(db)(v), by deleting "個" and
substituting "項".

(b) In paragraph (c) -

(i) in the proposed section
265(5F)(c), by deleting "or agent,
or in a client account, for an

excluded person" and substituting
"for an excluded person, or in a
client account for an excluded
person as the depositor's client";

(ii) in the proposed section

265(5H) (b) -

(A) by deleting ", principal";

(B) by deleting ", (iii)";

(iii) by adding -

"(5HA) If a deposit, or
portion thereof, held by a
depositor in a client account
for a client is also held by
the depositor as a trustee
(whether a bare trustee or
not) under a trust (whether a
bare trust or not), the
deposit or portion is, for
the purposes of this section,
taken as being held by the
depositor for the client and
not as such trustee.";

(iv) in the proposed section 265(5I) -

(A) by deleting paragraph

(a) (iii);

(B) by deleting ", (iii)" where
it twice appears.

(c) In paragraph (d)(iii) -

(i) in the definition of "excluded
person", in paragraph (b) -

(A) by adding "being wound up"
before "or its";

(B) in subparagraph (i), by
deleting "has been" and
substituting "is";

(C) in subparagraph (ii) -

(I) by deleting "a
petition" and
substituting "the
petition";

(II) by deleting "has
been" and
substituting "is";

(ii) in the definition of "specified
date" -

(A) in paragraph (a), by deleting
"has been" and substituting
"is";

(B) in paragraph (b) -

(I) by deleting "a
petition" and

substituting "the
petition";

(II) by deleting "has
been" and

substituting "is";

(iii) by adding -

"client account" (客戶帳戶),

in relation to a
depositor, means an
account maintained by
the depositor with a
bank for the purpose of
holding money held by
the depositor for a
client of the depositor,
whether or not other
money may be held in the
account;".

Schedule 5 By deleting section 2 and substituting -

"2. Official secrecy

Section 120 of the Banking Ordinance

(Cap. 155) is amended -

(a) in subsection (5), by adding
after paragraph (g) -

"(gaa) to the disclosure

of information by
the Monetary
Authority to the
Hong Kong Deposit
Protection Board
established by
section 3 of the
Deposit Protection
Scheme Ordinance
(of 2004) for
the purpose of
enabling or
assisting the Board
to exercise its
functions under
that Ordinance;"

(b) in subsection (5C), by adding
", (gaa)" after "(fa)".

Schedule 5 By adding immediately after section 3 -

"Prevention of Bribery Ordinance

3A. Public bodies

Schedule 1 to the Prevention of Bribery
Ordinance (Cap. 201) is amended by adding -
"[101]. Hong Kong Deposit Protection

Board.".

Electronic Transactions Ordinance

3B. Proceedings in relation to which sections 5, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance

Schedule 2 to the Electronic Transactions Ordinance (Cap. 553) is amended -

(a) in paragraph (zm), by repealing the full stop at the end and substituting a semicolon;

(b) by adding -

"(zn) the Deposit Protection Appeals Tribunal established by the Deposit Protection Scheme Ordinance (of 2004)."."

Schedule 5,
section 6

In the proposed section 378(2)(ea), by adding
"section 5(a), (d) and (e) of" before "that
Ordinance".

Schedule 5,
section 7(b)

In the proposed section 4(1A), by deleting
"received payment that is made out of" and
substituting "been paid an amount of compensation
from".