

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2002/05-06  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/3/05

**Subcommittee to Study Four Items of Subsidiary Legislation  
under the Deposit Protection Scheme Ordinance**

**Minutes of the first meeting held on  
Monday, 12 June 2006, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)  
Dr Hon David LI Kwok-po, GBS, JP  
Hon CHAN Kam-lam, SBS, JP  
Hon CHIM Pui-chung
- Members absent** : Hon Albert HO Chun-yan  
Hon Ronny TONG Ka-wah, SC
- Public officers attending** : Mrs Millie NG  
Principal Assistant Secretary for Financial Services and the  
Treasury (Financial Services)
- Ms Carmen CHU  
Senior Government Counsel (Law Drafting Division)  
Department of Justice
- Ms Lonnie NG  
Senior Government Counsel (Law Drafting Division)  
Department of Justice
- Miss Selina LAU  
Government Counsel (Law Drafting Division)  
Department of Justice

**Attendance by invitation** : Mr Raymond LI, JP  
Chief Executive Officer  
Hong Kong Deposit Protection Board

Mr Raymond CHAN  
Deputy Chief Executive Officer (Operations)  
Hong Kong Deposit Protection Board

**Clerk in attendance** : Miss Salumi CHAN  
Chief Council Secretary (1)5

**Staff in attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Rosalind MA  
Senior Council Secretary (1)8

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**I. Election of Chairman**

Mr SIN Chung-kai was elected Chairman of the Subcommittee.

**II. Meeting with the Administration**

(L.N. 107 of 2006

— Deposit Protection Scheme (DPS) Ordinance (Amendment of Schedules 1 and 4) Notice 2006

LC Paper No. CB(1)1710/05-06(01)

— Marked-up copy of Schedules 1 and 4 to the DPS Ordinance

Ref: B9/2/2C

— The Legislative Council Brief on “DPS Ordinance (Amendment of Schedules 1 and 4) Notice 2006” issued by the Financial Services and the Treasury Bureau (FSTB)

L.N. 108 of 2006	—	DPS (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (“Representation Rules”)
L.N. 109 of 2006	—	DPS Ordinance (Payment of Contributions, Late Payment Fees and Rebates) Rules (“Contribution Rules”)
Ref: B9/2/2C	—	The Legislative Council Brief on “DPS (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules and DPS (Payment of Contributions, Late Payment Fees and Rebates) Rules” issued by FSTB
L.N. 110 of 2006	—	DPS Ordinance (Commencement) Notice 2006
LC Paper No. LS72/05-06	—	Legal Service Division Report
LC Paper No. CB(1)1710/05-06(02)	—	Background brief prepared by the Legislative Council Secretariat)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

3. At the request of the Subcommittee, the Administration agreed to take the following actions:

- (a) Noting the practice adopted by some banks to reserve their rights to repay in Hong Kong dollar deposits made in foreign currencies, the Subcommittee was concerned whether the proposed new section 2A(a)(i) of Schedule 1 to the DPS Ordinance (section 2(3) of L.N. 107) would have the effect of including some deposits in foreign currencies as “structured deposits” thereby excluding them from the DPS, which was inconsistent with the original policy objective of the Administration. The Administration was requested to provide written response to address the above concern and the corresponding proposed amendments to

section 2A(a)(i), if necessary; and

- (b) On the Subcommittee's concern about the inconsistency of the term used to refer to "holiday" in the proposed amendments to Schedule 4 to the DPS Ordinance ("general holiday" in section 3(1)(b) of L.N. 107) and the Contribution Rules ("public holiday" in section 3(3) and in the definition of "working day" in section 3(5) of L.N.109), the Administration was requested to consider proposing amendments to the relevant provisions to maintain consistency in drafting, should amendments be proposed in response to the Subcommittee's concern in item (a) above.

*(Post-meeting note: The Administration's response to issues in paragraph 3 above was circulated to members vide LC Paper No. CB(1)1813/05-06(02) on 20 June 2006.)*

#### Public consultation

4. Members noted that the Hong Kong Deposit Protection Board (HKDPB) had conducted consultation with relevant stakeholders as set out in the two relevant Legislative Council (LegCo) Briefs issued by the Administration on 19 May 2006. Members were assured by HKDPB that all comments received during consultation had been properly addressed. Members therefore considered it not necessary for the Subcommittee to invite views from the public or the stakeholders on the four items of subsidiary legislation.

#### Next step

5. The Subcommittee completed scrutiny of the four items of subsidiary legislation under the DPS Ordinance. To allow time for the Administration to prepare its written response to the issues raised by the Subcommittee in paragraph 3 above and any proposed amendments, the Subcommittee agreed that a motion be moved at the LegCo meeting on 21 June 2006 for extending the scrutiny period of the four items of subsidiary legislation to 12 July 2006.

6. Subject to any comments members might have on the Administration's written response and any proposed amendments, the Subcommittee agreed that it would report its deliberations to the House Committee in due course.

*(Post-meeting note: The Subcommittee reported its deliberations to the House Committee on 30 June 2006.)*

**III. Any other business**

7. There being no other business, the meeting ended at 5:55 pm.

Council Business Division 1  
Legislative Council Secretariat  
17 July 2006

**Proceedings of the first meeting of the  
Subcommittee to Study Four Items of Subsidiary Legislation  
under the Deposit Protection Scheme Ordinance  
on Monday, 12 June 2006, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000-000050	Dr David LI	Election of Chairman	
000051-000120	Chairman	Welcoming and introductory remarks	
<i>Deposit Protection Scheme (DPS) Ordinance (Amendment of Schedules 1 and 4) Notice 2006 (“Amendment Notice”) (L.N. 107 of 2006 and LC Paper No. CB(1)1710/05-06(01))</i>			
000121-000611	Hong Kong Deposit Protection Board (HKDPB)	Briefing by HKDPB	
000612-000720	Mr CHIM Pui-chung HKDPB	(a) Mr CHIM Pui-chung’s enquiry on whether the proposed amendment to Schedule 4 to provide that if 20 October of any year was a general holiday, Scheme members should report the amount of relevant deposits based on the position of the immediate preceding day which was not a general holiday, would have any impact on the general public  (b) HKDPB’s advice that the proposed amendment to Schedule 4 in item (a) above would not have any impact on the general public	

Time marker	Speaker	Subject(s)	Action Required
000721- 002825	Chairman HKDPB Assistant Legal Adviser 6 (ALA6) Administration Mr CHIM Pui-chung	<p><u>Section 1 – Commencement</u></p> <p>Briefing by the HKDPB</p> <p><u>Section 2 – Deposits specified for purposes of definitions of “protected deposit” and “relevant deposit” in section 2(1) of this Ordinance</u></p> <p>(a) The Chairman’s concern of whether the proposed exclusion of structured deposits from DPS protection was in line with the practices of other jurisdictions</p> <p>(b) HKDPB’s advice that in general, structured deposits were excluded from DPSs in other jurisdictions. However, the definition of “deposit” and the scope of coverage of the schemes in other jurisdictions were different from those in Hong Kong</p> <p>(c) Noting the practice adopted by some banks to reserve their rights to repay in Hong Kong dollar deposits made in foreign currencies, ALA6 sought clarification on whether the proposed new section 2A(a)(i) of Schedule 1 to the DPS Ordinance (section 2(3) of the Amendment Notice) would have the effect of including some deposits in</p>	

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		<p>foreign currencies as structured deposits, thereby excluding them from the DPS</p> <p>(d) HKDPB’s response that the proposed amendments to Schedule 1 for exclusion of structured deposits from DPS protection had been worked out in consultation with the banking industry. It was the Administration’s policy objective to include deposits in foreign currencies in DPS. The definition of “structured deposit” would be further examined in the light of ALA6’s concern</p> <p><u>Section 3 – Contributions to Fund</u></p> <p>(a) The Chairman noted that in section 3(6), 365 days a year was used for calculation of the amount of build-up levy payable by a Scheme member. Pointing out that some banks had used 360 days a year for calculation of interest payment on a pro-rata basis, the Chairman doubted whether the Hong Kong Monetary Authority (HKMA) had issued any guidelines to banks in this regard</p> <p>(b) HKDPB’s advice that HKMA did not impose any restrictions on banks in respect of using 360 or 365 days for the calculation of</p>	<p>The Administration to take follow-up action as required in paragraph 3(a) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		pro-rata payment	
<i>DPS (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (“Representation Rules”) (L.N. 108 of 2006)</i>			
002826- 005027	HKDPB Chairman ALA6	<p><u>Section 1 – Commencement</u></p> <p>Briefing by HKDPB</p> <p><u>Section 2 – Interpretation</u></p> <p>Briefing by HKDPB</p> <p><u>Section 3- Display of Membership Sign</u></p> <p>(a) Briefing by HKDPB</p> <p>(b) ALA6’s concern on whether the definition of “relevant place of business” covered offices of private banking</p> <p>(c) HKDPB’s advice that the definition covered such offices, as clients of private banking, who were members of the public, ordinarily had physical access to the offices. On the question of whether a Scheme member was required to display a Membership Sign at each entrance on different floors of the same branch office, HKDPB pointed out that under section 3(1)(a), the display should be made in such a manner that the Membership Sign was reasonably visible to any</p>	

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		<p>person entering the place. Scheme members had been informed of the relevant requirements and HKDPB would closely monitor the situation through site inspections after the launch of DPS</p> <p>(d) The Chairman was concerned whether the Membership Sign would be reasonably visible to any person entering a bank branch given its small size (21.5 cm x 10 cm) and unattractive logo. He suggested that reference be made to the practice in the United States where a scheme member was required to display a Membership Sign at each counter</p> <p>(e) HKDPB advised that different jurisdictions had their own considerations in designing the features and requirements of their DPSs. HKDPB considered the current proposal under the Representation Rules appropriate for Hong Kong. As regards the logo of the DPB, HKDPB might consider improving the design when necessary in future</p> <p>(f) Members noted HKDPB's advice that flexibility was allowed for the size of the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Membership Sign displayed on the website by Scheme members taking into account limitation of the screen size of computer monitors</p> <p><u>Section 4 – Membership representations in advertisements</u></p> <p>Briefing by HKDPB</p> <p><u>Section 5 – Disclosure as to financial products offered before commencement of these Rules</u></p> <p>Briefing by HKDPB</p> <p><u>Section 6 – Disclosure as to financial products offered on or after commencement of these Rules</u></p> <p>Briefing by HKDPB</p>	
005028-005631	HKDPB ALA6 Administration Chairman	<p><u>Section 7 – Disclosure when deposits are no longer protected by Scheme</u></p> <p>(a) Briefing by HKDPB</p> <p>(b) ALA6’s concern about whether notification by email or on-line notification would satisfy the requirement for giving notification in writing on any variations to the deposits (on which the deposits would no longer be protected by the DPS)</p> <p>(c) The Administration’s advice</p>	

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		<p>that the two forms of notification mentioned in item (b) above would satisfy the requirement if the relevant provisions in the Electronic Transactions Ordinance (Cap. 553) were complied with</p> <p>(d) The Chairman sought information on examples of variations to deposits to the effect that the deposits would no longer be protected under the DPS</p> <p>(e) HKDPB advised that such variations might include changes to the terms and conditions of deposit, such as the period of maturity of the deposit and the credit facility secured by the deposit, to the effect that the deposit was no longer a protected deposit</p>	
005632-005927	Administration Chairman ALA6 HKDPB	<p><u>Section 8 – Offences</u></p> <p>(a) Briefing by HKDPB</p> <p>(b) Noting the offence provision under the Representation Rules (a fine up to \$100,000 and imprisonment up to two years), the Chairman enquired who would be charged with the offence for contravention of the Rules, as a Scheme member was a company, not a person</p>	

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		<p>(c) The Administration advised that under section 101E of the Criminal Procedure Ordinance (Cap. 221), where a person by whom an offence under any Ordinance had been committed was a company and it was proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the company, or any person purporting to act as such director or officer, the director or other officer should be guilty of the like offence</p>	
005928-010015	HKDPB	<p><u>Section 9 – Defences</u></p> <p>Briefing by HKDPB that a defence was afforded to a person charged if he could prove that he had taken reasonable precaution and exercised due diligence to avoid the commission of the offence by himself or any person under his control</p>	
010016-010420	Mr CHAN Kam-lam HKDPB Chairman	<p><u>Schedule (Membership Sign)</u></p> <p>(a) Mr CHAN Kam-lam’s view that the design and colours of the DPS logo were unattractive. He also commented that it was not necessary to include the written information on the coverage limit of DPS in the Membership Sign, and that</p>	

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		<p>the design of the Sign should be simplified</p> <p>(b) HKDPB’s explanation that the written information was included to facilitate public understanding of the DPB, which was important during the initial period after the launch of the scheme. As regards the design of the logo, HKDPB might consider improving it when necessary in future</p>	
<p><b><i>DPS (Payment of Contributions, Late Payment Fees and Rebates) Rules (“Contribution Rules”) (L.N. 109 of 2006)</i></b></p>			
010421-010638	HKDPB	<p><u>Section 1- Commencement</u></p> <p>Briefing by HKDPB</p> <p><u>Section 2- Interpretation</u></p> <p>Briefing by HKDPB</p>	
010639-010822	Chairman HKDPB	<p><u>Section 3 – Payment of contributions and late payment fees</u></p> <p>(a) Briefing by HKDPB</p> <p>(b) The Chairman noted that “specified time” was defined in section 3(5) to mean the time between 9 am and 12:30 pm on a day. He enquired why afternoon time was not covered in the definition</p> <p>(c) HKDPB advised that the</p>	

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		<p>arrangement was proposed to allow sufficient time for the Monetary Authority to recycle within the same day contributions received from Scheme members back to the inter-bank market. This arrangement was accepted by Scheme members during consultation</p>	
010823-011134	Chairman HKDPB	<p><u>Section 4 – Payment of rebates</u></p> <p>Briefing by HKDPB that under section 8 of Schedule 4 to the Ordinance, a rebate should be made by HKDPB to Scheme members in any year if 115% of the target fund size for that year was smaller than the balance of the Fund as at 20 October of the immediately preceding year. The amount of rebate payable to a Scheme member would be computed on the basis of the amount of contribution made by the Scheme member during the relevant period</p>	
<b><i>DPS (Commencement) Notice 2006 (“Commencement Notice”)</i></b>			
011035-011254	Chairman Administration	<p>Briefing by the Administration that the Commencement Notice served to appoint 25 September 2006 as the day on which those provisions of the DPS Ordinance that had not come into operation should come into operation</p>	

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<i>Follow-up actions and next step</i>			
011255-011631	Chairman ALA6 Administration	<p>(a) ALA6’s concern about the inconsistency of the term used to refer to “holiday” in the proposed amendments to Schedule 4 to the DPS Ordinance and the Contribution Rules</p> <p>(b) The Administration’s explanation that the two terms had the same meaning and were used interchangeably in law drafting</p> <p>(c) The Chairman requested the Administration to consider necessary amendments to the relevant provisions so as to maintain consistency in drafting, where possible</p>	The Administration to take follow-up actions as required in paragraph 3(b) of the minutes
011632- 012330	Chairman Clerk HKDPB Administration Mr CHAN Kam-lam ALA6	<p>(a) Members considered that it was not necessary for the Subcommittee to invite public views on the four items of subsidiary legislation</p> <p>(b) To allow time for the Administration to prepare its written response to the issues raised by the Subcommittee in paragraph 3 of the minutes and any proposed amendments, the Subcommittee agreed that a motion be moved at the</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		Council meeting on 21 June 2006 for extending the scrutiny period of the four items of subsidiary legislation to 12 July 2006	

Council Business Division 1  
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17 July 2006