

立法會
Legislative Council

LC Paper No. CB(1)2746/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/BC/5/09/2

Bills Committee on Deposit Protection Scheme (Amendment) Bill 2010

Second meeting on
Thursday, 20 May 2010, at 8:30 am
in Conference Room B of the Legislative Council Building

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP

Members absent : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

Public officers : Ms Meena DATWANI
Attending Executive Director (Banking Conduct)
Hong Kong Monetary Authority

Mr Colin POU
Head (Deposit Protection Scheme)
Hong Kong Monetary Authority

Mr Adrian LAM
Assistant Secretary for Financial Services and the Treasury
(Financial Services)

Ms Phyllis KO
Senior Assistant Law Draftsman
Department of Justice

Miss Mandy NG
Government Counsel
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Fred PANG
Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)8

I Meeting with the Administration

Follow-up to issues raised at the meeting on 6 May 2010

(LC Paper No. CB(1)1906/09-10(01) — Administration's response to issues raised at the meeting on 6 May 2010)

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

Disclosure on protection status of deposit products

2. Members expressed concern whether and how the public would be informed of the changes to the protection status of their deposits as a result of (a) the lifting of the temporary full deposit guarantee after the end of 2010 and (b) the implementation of the enhanced Deposit Protection Scheme (DPS) scheduled for 1 January 2011. As deposits at restricted licence banks (RLBs) and deposit-taking companies (DTCs), which were covered under the temporary full deposit guarantee, would revert to the non-protection status starting from 2011, members were concerned whether and how RLBs and DTCs would be required to duly inform their clients of this change in the protection status of their deposits.

3. The Administration advised that the Hong Kong Monetary Authority (HKMA) and the Hong Kong Deposit Protection Board (HKDPB) would take appropriate measures to ensure that the public and clients of all authorized institutions (AIs), which included DPS members as well as DTCs and RLBs, were well aware of the impending changes to the deposit protection arrangement in Hong Kong, including the fact that deposits at RLBs and DTCs would no longer be covered by any form of deposit protection starting from 1 January 2011 (i.e. reverting to the situation before the introduction of the full deposit guarantee), so that the relevant clients could make timely preparations for the transition if they deemed it necessary.

4. The Administration also advised that upon enactment of the Bill, HKDPB would make additional rules on disclosure of deposit protection status in the form of subsidiary legislation which would be subject to the negative vetting procedure. With the additional disclosure rules, banks would be required to make disclosures to their clients in relation to both protected and non-protected deposits. HKDPB would also launch a publicity campaign about the impending changes to the deposit protection arrangement in Hong Kong. As to how AIs would inform their clients of the changes, the Administration advised that it had yet to determine whether the disclosure should be made by means of a letter to each client or by other means. HKMA would, after consulting the industry concerned, also decide whether statutory guidelines would be issued to AIs in this regard.

5. Ms Audrey EU opined that the measures to be adopted for informing the public and depositors about the changes to the deposit protection arrangement due to the lifting of temporary full deposit guarantee and the implementation of the enhanced DPS should at least be as comprehensive and informative as the measures previously adopted for informing the public and depositors about the implementation of the temporary full deposit guarantee. The Chairman opined that the Administration should aim at informing the public and depositors very clearly about the protection status of each type of deposits, including structured deposits, through its publicity and the disclosure requirements on AIs. The Administration took note of the members' views.

Deposit protection arrangements in other jurisdictions

6. Ms Miriam LAU noted that the United States would provide deposit protection up to a limit of US\$250,000 until end 2013 and the protection limit would return to US\$100,000 in 2014. She queried why the United States could offer a protection level higher than the level offered by Hong Kong's future enhanced DPS and enquired about the factors for determining the level of deposit protection.

7. The Administration advised that the percentage of depositors that would be offered full deposit protection was the main factor for determining the proposed deposit protection limit. The proposed protection limit of \$500,000, which would have the effect of providing full protection to 90% of depositors, was in line with the international standards. In Singapore, the deposit protection limit would be raised to

SG\$50,000 (or about HK\$280,000), but the percentage of depositors fully protected would also be around 90%. The relevant authority of the United States had not revealed the percentage of depositors that could be protected under the deposit protection limit of US\$100,000.

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)575/09-10 — The Bill
- LC Paper No. CB(1)1807/09-10(01) — Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)1807/09-10(02) — Letter from Assistant Legal Adviser to the Administration dated 19 April 2010 on Deposit Protection Scheme (Amendment) Bill 2010
- LC Paper No. CB(1)1807/09-10(03) — Administration's response to the letter from Assistant Legal Adviser dated 21 April 2010 on Deposit Protection Scheme (Amendment) Bill 2010)

Other relevant papers previously issued

- (B9/2/2C — The Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. CB(1)1842/09-10(01) — Administration's paper on Deposit Protection Scheme (Amendment) Bill 2010 (Powerpoint presentation materials)

Definition of "deposit" - (Clause 3 - Section 2 amended)

8. Members noted that under the existing Deposit Protection Scheme Ordinance (Cap. 581) (DPSO), “deposit” had the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155) (BO). On members' concern about the difference between the current definition of "deposit" in DPSO and the proposed new definition under the Bill, the Administration advised that under section 2(1) of the BO, “deposit” excluded a loan of money upon terms referable to the provision of property or services. Under DPSO, a loan of money that was subject to any security referable to the provision of any banking or financial services was not regarded as “deposit” under the current definition but would be regarded as “deposit” under the proposed new definition. The proposed new definition sought to expand the protection coverage of DPS to include secured deposits.

9. In reply to members' enquiries, the Administration advised that the following types of secured deposits, among others, would be brought under the protection coverage of DPS under the proposed new definition of "deposit" -

- (a) a deposit secured for a guarantee issued by a bank in favour of a third party to undertake a rental payment, provided that the third party was not the bank itself;
- (b) a deposit secured in a bank for obtaining the services of securities trading provided by the bank; and
- (c) a deposit secured for a letter of credit issued by a bank.

10. In reply to Mr WONG Ting-kwong's enquiry, the Administration confirmed that as specified in the proposed new definition of "deposit", so long as the security (including any form of encumbrance, charge, mortgage, pledge, lien and right of set off) that a deposit was subject to was referable to the provision of any banking or financial services, a secured deposit would fall within the protection coverage of the enhanced DPS.

11. In reply to members' enquiries, the Administration advised that the following types of payments to a bank, among others, were not and would not be covered by the DPS even with the proposed new definition of "deposit" -

- (a) a deposit collected by a bank for the purpose of securing tenancy of a property owned by the bank itself;
- (b) a sum of money deposited in a bank for settlement of securities transactions;
- (c) a sum of money deposited in a margin account if the sum of money was used to pay for the service charges for trading on margin; and
- (d) a sum of money deposited in a bank for the specified purpose of payment to a third party even if the sum of money was not eventually paid to the third party because the specified purpose had failed.

Entitlement to compensation: general (Clause 4 - section 27 amended)

Trusts and bare trusts

12. Ms Miriam LAU enquired about the protection status of a deposit that was held in trust by a child's parents for the child. With reference to the provisions under the existing sections 29 and 30 of the DPSO, ALA3 enquired about the difference between a trust account and a bare trust account in terms of deposit protection.

13. The Administration advised that a trust account was held by someone who acted as the trustee for a beneficiary and who controlled the account until the balance was payable to the beneficiary in accordance with the terms of the trust. Under section 30 of the DPSO, if a depositor of a protected deposit with a failed DPS member held the deposit as a trustee under a trust, the depositor as trustee but not the beneficiary in respect of the deposit was entitled to compensation from the DPS Fund. Under section 29 of the DPSO, if a depositor of a protected deposit with a failed DPS member held the deposit as a bare trustee under a bare trust, the beneficiary (not the bare trustee) in respect of the deposit was entitled to compensation from the DPS Fund if the DPS member concerned failed.

14. Ms Audrey EU queried whether the Administration would consider proposing amendments so that the beneficiary, instead of the trustee, of a trust account was entitled to the compensation. The Administration advised that such an arrangement would encourage account holders who had deposits of more than \$500,000 to set up multiple trust accounts for multiple beneficiaries so that all their deposits would be protected under the future enhanced DPS. This was not the policy intention of the enhanced DPS.

15. In reply to Mr WONG Ting-kwong's enquiry, the Administration advised that every depositor in each bank would be entitled to protection up to \$500,000 under the future enhanced DPS, regardless of the number of accounts kept by the depositor within a bank. A depositor who had accounts in multiple banks would be entitled to deposit protection up to \$500,000 for the deposits in each of the banks.

16. Ms Miriam LAU enquired why a wider protection scope and higher protection level could be provided in the United States than that in Hong Kong. The Administration advised that in determining the amount of compensation for depositors of a failed DPS member under the DPSO, the Administration needed to adhere to the principle that the DPS would not pay out more to depositors than it could recover from the failed DPS member in liquidation. This principle prevented charging too high a premium on DPS members and was consistent with the current insolvency-related provisions under the Companies Ordinance (Cap. 32).

Personal sole accounts and joint accounts

17. In reply to Ms Audrey EU's enquiry about the protection status for a depositor who held a personal sole account and a joint account in a bank, the Administration advised that the depositor was entitled to a total protection limit of \$500,000 for the deposits in these two accounts. Generally speaking, each holder of a joint account was deemed to have an equal share in the deposit unless the contrary, such as a contractual agreement specifying each holder's share of the deposit, was proved to the satisfaction of the HKDPB. In reply to Mr Tommy CHEUNG's further enquiry, the Administration advised that the contractual agreement should be an agreement already in place before the occurrence of the failure of DPS member concerned.

Determination of value of annuities and future and contingent liabilities, and amount of interest accrued on deposits or liabilities

18. In reply to Ms Audrey EU's enquiry about the policy intent of introducing the proposed section 27(4)(c) and (d), the Administration advised that according to the existing DPSO, HKDPB was required to apply the rules currently in force under the law of bankruptcy in the process of determining the amount of liabilities of a person to the failed DPS member, the value of annuities and future and contingent liabilities and the amount of interest accrued on deposits or liabilities. The process could take a considerable amount of time and might delay the payment of compensation to the person entitled to it. The proposed provisions sought to inject flexibility into the compensation determination process by empowering HKDPB to make estimates of the compensation and shorten the time required to make compensation to depositors.

19. Ms Audrey EU and Ms Miriam LAU enquired whether a mechanism was in place to resolve disputes over the amount of compensation estimated by HKDPB under the proposed section 27(4)(c) or (d). The Administration advised that HKDPB was obliged to pay the shortfall if it had underestimated the amount of compensation. The depositors were entitled to priority claims in respect of the shortfall. Any person who was aggrieved by a decision of HKDPB made under the proposed section 27(4)(c) or (d) might apply to the Deposit Protection Appeals Tribunal (the Tribunal) for a review of the decision. The Tribunal was established under section 40 of the DPSO and was independent from HKDPB.

20. ALA3 noted that section 41(1) of the DPSO provided for a person to apply to the Tribunal for review of the decisions made by the HKDPB under various specified sections but not section 27(4) of the DPSO. He queried whether the HKDPB's decisions under the proposed section 27(4)(c) or (d) were appealable, i.e. subject to the review of the Tribunal. The Administration explained that under section 41(1), HKDPB's decisions under section 32(5)(b) were appealable. As specified in section 32(5)(b), HKDPB's decisions included decisions on "the amount of compensation to which he is entitled" under Division 2 of Part 5 of the DPSO. Since Division 2 included section 27(4), HKDPB's decisions on "the amount of compensation to which he is entitled" made under section 27(4) was appealable.

21. ALA3 noted that the proposed section 37(5) specified two types of compensation, namely, "the paid amount" (i.e. the amount paid by HKDPB as a result of an estimate made under section 27(4)(c) or (d)), and "the entitled amount" (i.e. the amount of compensation that would have been paid to the depositor if the estimate under section 27(4)(c) or (d) had not been made), and that the wording "the amount of compensation to which he is entitled" under section 32(5)(b) might only cover "the entitled amount" but not "the paid amount". As such, it was questionable whether "the paid amount" determined under the proposed section 27(4)(c) or (d) was appealable. Ms Audrey EU and Ms Miriam LAU shared ALA3's concern and queried whether a decision of the HKDPB made under section 27(4)(c) or (d) was

subject to review by the Tribunal. Ms Audrey EU further pointed out that as described in the proposed section 37(5), the amount of compensation paid to a depositor as a result of an estimate made by the HKDPB under the proposed section 27(4)(c) or (d) was "the paid amount", not "the entitled amount". If only "the entitled amount" was appealable, the estimate under the proposed section 27(4)(c) or (d) could be interpreted as not appealable.

22. The Administration advised that the proposed section 37(5) was introduced for the purposes of section 37(1) only and that it was not intended to have effect on other provisions including section 32(5)(b). The compensation of "the specified amount" under section 27(1) was an amount of compensation determined by HKDPB based on the calculations specified in section 27(3) and (4)(a) and (b). The proposed section 27(4)(c) and (d) was introduced to empower HKDPB to calculate "the specified amount" by approximation.

23. Ms Miriam LAU opined that the Administration should consider amending the relevant provisions to specify explicitly that HKDPB's decisions made under the proposed section 27(4)(c) or (d) were appealable, if that was the policy intention. The Administration responded that section 27(4) was already included in Division 2 of Part 5 of the DPSO, which was appealable.

Admin

24. The Chairman requested the Administration to review the relevant provisions taking into account members' concerns.

Interim payment - (Clause 6 – Section 36 amended)

25. Mr WONG Ting-kwong enquired how HKDPB would handle the situation where it failed to recover an excessive interim payment from a person. The Administration advised that in that case, the DPS Fund would bear the loss involved. However, HKDPB would be prudent in determining interim payments to avoid making excessive payments.

26. Ms Miriam LAU and Ms Audrey EU enquired whether HKDPB's decisions made under section 36 were appealable and whether an estimate made under section 27(4) upon which an interim payment under section 36 was determined was appealable. The Administration advised that HKDPB's decisions made under section 36 were not subject to review by the Tribunal under section 41(1). The final compensation that a depositor was entitled to was decided by HKDPB under section 27. Decisions under section 27(4) were appealable in the context of final compensation but not in the context of interim payments. The policy intention of providing interim payments under section 36 was to cater for the financial need of individual depositors. It was not mandatory for HKDPB to make interim payments. The proposed section 36(2) was introduced to empower HKDPB to make interim payments to avoid unduly delaying the compensation to depositors and to apply differential interim payments to different depositors as the Board considered appropriate. For example, a depositor with financial hardship might receive an interim payment of an amount different from the amount received by other depositors.

27. Ms Miriam LAU and Ms Audrey EU expressed concern that both the existing section 36 and the proposed section 36(2) did not provide that HKDPB's determination of interim payments would take into account the "hardship" factor. Rather, the factors to be considered by HKDPB, as specified in the existing section 36(a) and (b), were that -

- (a) there is uncertainty as to the entire amount of compensation payable to the depositor in accordance with the DPSO; or
- (b) the time required to ascertain the entire amount of compensation payable to the depositor in accordance with the DPSO would be so long as to unduly delay the payment of compensation to the depositor by the HKDPB.

Ms Miriam LAU and Ms Audrey EU pointed out that it might be unlawful for HKDPB to make interim payments of different amounts to different depositors or different classes of depositors under the proposed section 36 based on the consideration of "hardship" or any factors other than those specified in the existing section 36(a) and (b). If the policy intent was for the HKDPB to take into account the "hardship" and/or other factors in exercising its discretion under section 36, the Administration should consider further amending section 36 to spell out the factors in the section.

Admin 28. Taking note of members' views, the Administration agreed that it would consider whether the proposed section 36(2) should be amended to spell out the circumstances in which differential interim payments might be made and/or the factors which the DPB would take into account in making such differential payments.

Admin 29. Ms Miriam LAU and Ms Audrey EU also expressed concern that since estimates made under the proposed section 27(4)(c) or (d) could affect the amount of interim payments determined by HKDPB under section 36, the Administration should make sure that the provisions concerned would clearly reflect the policy intent as to whether the decisions of HKDPB made under the two sections were appealable. The Administration agreed to review the relevant provisions.

II Any other business

Date of next meeting

30. The Chairman said that he would work out with the Clerk the arrangements for the next meeting and members would be informed of the details in due course.

(Post-meeting note: Members were notified vide LC Paper No. CB(1)2012/09-10 on 25 May 2010 of the arrangements for the meetings scheduled for 3 June 2010 and 8 June 2010)

31. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
20 August 2010

**Proceedings of the
Bills Committee on Deposit Protection Scheme (Amendment) Bill 2010
Second meeting on Thursday, 20 May 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000248 – 000320	Chairman	Opening remarks	
Follow-up to issues raised at the meeting on 6 May 2010			
000321 – 000512	Administration	Briefing by the Administration on paper LC Paper No. CB(1)1906/09-10(01)	
000513 – 001105	Chairman Administration Ms Audrey EU Mr WONG Ting-kwong	Disclosure on protection status of deposit products	
000620 – 000756	Ms Miriam LAU Administration	Deposit protection arrangements in other jurisdictions	
Clause-by-clause examination of the Bill			
001106 – 001349	Chairman ALA3 Ms Audrey EU	Members agreed to first scrutinize the Chinese version of the Deposit Protection Scheme (Amendment) Bill 2010, with reference to the marked-up copy of the Bill.	
001350 – 002855	Administration Ms Audrey EU Mr WONG Ting-kwong	<p>Long title</p> <p>Part 1</p> <p>Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Commencement</u></p> <p>Members raised no question on long title, clauses 1 and 2.</p> <p>Part 2</p> <p>Amendments to Deposit Protection Scheme Ordinance</p> <p><u>Clause 3 – Section 2 amended (Interpretation)</u></p> <p>Proposed definition of “deposit”</p>	

Time Marker	Speaker	Subject(s)	Action Required
002203 – 003641	Mr Tommy CHEUNG Ms Audrey EU Administration	Whether certain sums of money deposited in a bank would be protected under the future enhanced DPS Introduction of subsidiary legislation on disclosure requirements on DPS members upon enactment of the Bill	
002720 – 003546	Mr WONG Ting-kwong Mr Tommy CHEUNG Administration	Types of secured deposits protected under the future enhanced DPS	
002900 – 002946	Administration	<u>Clause 4 – Section 27 amended (Entitlement to compensation: general)</u> Administration's introduction	
003642 – 005027	Mr Tommy CHEUNG Administration Ms Miriam LAU Chairman ALA3 Ms Audrey EU	Deposit protection arrangement for a depositor with multiple accounts in a bank vis-à-vis that for a depositor with accounts in multiple banks. Protection arrangements for deposits under trusts and bare trusts. Protection arrangements for deposits held in personal sole accounts and joint accounts	
005028 – 014127	Ms Audrey EU Administration Ms Miriam LAU ALA3 Chairman	Proposed section 27(4)(c) or (d) Whether an estimate made under section 27(4)(c) and (d) was appealable	The Administration to take action
014230 – 015836	Administration Ms Miriam LAU Chairman	<u>Clause 5 – Section 35 substituted</u> <i>35. Maximum amount of compensation payable to a depositor</i> Members raised no question on clause 5.	
014408 – 015909	Administration Mr Wong Ting-kwong Ms Miriam LAU Ms Audrey EU Chairman	<u>Clause 6 – Section 36 amended (Interim payment)</u> Non-recoverable excessive interim payment Whether an interim payment under section 36 based on an estimate made under section 27(4)(c) and (d) was appealable	The Administration to take action

Time Marker	Speaker	Subject(s)	Action Required
		Factors considered by HKDPB in determining interim payments of different amounts to different depositors or different classes of depositors	The Administration to take action
015909 – 020040	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
20 August 2010