

**DEPOSIT PROTECTION SCHEME (AMENDMENT)  
BILL 2010**

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# A BILL

## To

Amend the Deposit Protection Scheme Ordinance to increase the protection for depositors under the Deposit Protection Scheme; to reduce the additional annual costs incurred by Scheme members as a result of the increased protection; to facilitate the calculation and payment of compensation under the Scheme; to adjust accordingly the rights and remedies to which the Hong Kong Deposit Protection Board may be subrogated if it makes a payment of compensation; to allow meetings and other business of the Board to be conducted by electronic means; to confer additional rule-making powers on the Board; and to provide for consequential and related matters.

Enacted by the Legislative Council.

### PART 1

#### PRELIMINARY

##### **1. Short title**

This Ordinance may be cited as the Deposit Protection Scheme (Amendment) Ordinance 2010.

##### **2. Commencement**

(1) Subject to subsections (2) and (3), this Ordinance comes into operation on 1 January 2011.

(2) Sections 3, 9 and 13 come into operation on 20 October 2010 for the purpose only of submitting returns and reports under section 48(2) and (3) of the Deposit Protection Scheme Ordinance (Cap. 581) to enable calculations to be made under Schedule 4 to that Ordinance for the year of 2011.

(3) Section 10 comes into operation on the day on which this Ordinance is published in the Gazette.

## PART 2

### AMENDMENTS TO DEPOSIT PROTECTION SCHEME ORDINANCE

#### 3. Section 2 amended (Interpretation)

Section 2(1) of the Deposit Protection Scheme Ordinance (Cap. 581) is amended, in the definition of “deposit”, by repealing everything after “to it” and substituting “in the definition of “deposit” in section 2(1) of the Banking Ordinance (Cap. 155) except that, despite paragraph (b)(ii) of that definition, it includes a loan of money referred to in paragraph (a) of that definition that is subject to any security (including any form of encumbrance, charge, mortgage, pledge, lien and right of set off) referable to the provision of any banking or financial services;”.

#### 4. Section 27 amended (Entitlement to compensation: general)

(1) Section 27(1) is amended by repealing “\$100,000” and substituting “\$500,000”.

(2) Section 27(2) is amended by repealing “\$100,000” and substituting “\$500,000”.

(3) Section 27(4)(a) is amended by repealing “and” at the end.

(4) Section 27(4)(b) is amended—

(a) by adding “, subject to paragraph (c),” before “with regard to the valuation”;

(b) by repealing the full stop and substituting a semicolon.

(5) Section 27(4) is amended by adding—

“(c) the Board may determine the value of annuities and future and contingent liabilities by making an estimate that is reasonable and appropriate in the circumstances of the case if the Board considers that—

(i) there is uncertainty as to the value of the annuities and future and contingent liabilities;

(ii) the time required to ascertain the value of the annuities and future and contingent liabilities would be so long as to unduly delay the payment of compensation to the person entitled to the compensation; or

- (iii) the costs and expenses that would be incurred in the calculation made to ascertain the value of the annuities and future and contingent liabilities would, having regard to the likely difference between the ascertained value and the estimated value of the annuities and future and contingent liabilities, outweigh the benefits of making the calculation; and
- (d) the Board may determine the amount of interest accrued on deposits, or liabilities, by making an estimate that is reasonable and appropriate in the circumstances of the case if the Board considers that—
  - (i) there is uncertainty as to the entire amount of interest so accrued;
  - (ii) the time required to ascertain the entire amount of interest so accrued would be so long as to unduly delay the payment of compensation to the person entitled to the compensation; or
  - (iii) the costs and expenses that would be incurred in the calculation made to ascertain the entire amount of interest so accrued would, having regard to the likely difference between the ascertained amount and the estimated amount of the interest, outweigh the benefits of making the calculation.”.

## 5. Section 35 substituted

Section 35 is repealed and the following substituted—

### “35. Maximum amount of compensation payable to a depositor

The amount of compensation payable to a depositor of a failed Scheme member in accordance with this Ordinance is not to exceed—

- (a) the amount in respect of which the depositor would, on the winding up of the failed Scheme member, be entitled to priority under section 265(1)(db) of the Companies Ordinance (Cap. 32); or
- (b) where an estimate has been made under section 27(4)(c) or (d) as a result of which the specified amount of compensation to which the depositor is entitled as referred to in section 27(1) or (2) is greater than the amount referred to in paragraph (a), that specified amount subject to the limit prescribed in section 27(1) or (2).”.

**6. Section 36 amended (Interim payment)**

(1) Section 36 is amended by renumbering it as section 36(1).

(2) Section 36 is amended by adding—

“(2) The Board may, under subsection (1), make interim payments of different amounts to different depositors, or different classes of depositors, as the Board considers appropriate.”.

**7. Section 37 amended (Recovery of payment by Board)**

Section 37 is amended by adding—

“(5) For the purposes of subsection (1), a reference to the amount of compensation payable to the depositor in accordance with this Ordinance does not include, where an estimate has been made under section 27(4)(c) or (d) as a result of which the amount of compensation paid to the depositor (“the paid amount”) is greater than the amount of compensation that would have been paid to the depositor if the estimate had not been made (“the entitled amount”), the difference between the paid amount and the entitled amount.”.

**8. Section 38 amended (Subrogation)**

Section 38(6)(a) is amended by repealing “\$100,000” and substituting “\$500,000”.

**9. Section 48 amended (Power of Board to obtain information)**

Section 48(2) is amended by repealing everything after “, returns” and substituting—

“showing—

- (a) the amount of relevant deposits, within the meaning of section 1 of Schedule 4, maintained with the Scheme member;
- (b) the amount of relevant liabilities, within the meaning of section 1 of Schedule 4, owed by depositors to the Scheme member (if any); and
- (c) the breakdown of those relevant deposits and liabilities (if any).”.

**10. Section 51 amended (Power of Board to make rules)**

- (1) Section 51(1)(d) is repealed and the following substituted—  
“(d) requiring a Scheme member to make known to the public under specified circumstances that it is a member of the Scheme or will cease to be a member of the Scheme, and prescribing the manner in which the requirement is to be complied with;”.
- (2) Section 51(1) is amended by adding—  
“(da) requiring a Scheme member—
  - (i) to make known to the public under specified circumstances as to whether a deposit or any other financial product offered by the Scheme member is or is not a protected deposit; or
  - (ii) to obtain under specified circumstances an acknowledgment from any person placing or holding a deposit with, or investing in or holding any other financial product offered by, the Scheme member of having received a notification from the Scheme member as to whether the deposit or financial product is or is not a protected deposit, and prescribing the manner in which the requirement is to be complied with;”.
- (3) Section 51(1) is amended by adding—  
“(db) imposing restrictions on Scheme members relating to the descriptions or representations of any financial product as a deposit or a specified kind of deposit;”.

**11. Section 56 added**

The following is added—

**“56. Transitional provisions in relation to Deposit Protection Scheme (Amendment) Ordinance 2010**

(1) The amendments made to this Ordinance by the Deposit Protection Scheme (Amendment) Ordinance 2010 ( of 2010) (“the amending Ordinance”) do not apply if a specified event within the meaning of section 22(1) has occurred before the commencement of section 4 of the amending Ordinance, in which case the limit on the total amount of compensation to which a depositor may be entitled is the limit prescribed in section 27 before it is amended by that section 4 even though the payment of compensation is made after the commencement of that section 4.

(2) Rules made under section 51(1)(*da*) as added by section 10(2) of the amending Ordinance—

- (a) may provide that any requirement imposed by those rules applies in relation to a deposit or any other financial product that is in existence at the commencement of those rules; and
- (b) may prescribe the manner in which the requirement in relation to the deposit or financial product is to be complied with.

(3) Rules made under section 51(1)(*db*) as added by section 10(3) of the amending Ordinance may provide that those rules, in so far as they relate to the imposition of restrictions on Scheme members relating to the descriptions or representations of any financial product as a structured deposit, do not have effect in relation to any financial product that was being described or represented as a structured deposit immediately before the commencement of those rules.”.

## **12. Schedule 2 amended (Provisions relating to Board)**

(1) Section 2(4) of Schedule 2 is amended—

- (a) by repealing “absent from Hong Kong or is for any other reason” and substituting “, due to absence from Hong Kong or for any other reason,”;
- (b) by repealing “absence or”.

(2) Section 2(5) of Schedule 2 is amended—

- (a) by repealing “, other than the Chairman, is absent from Hong Kong or is for any other reason” and substituting “(other than the Chairman) is, due to absence from Hong Kong or for any other reason,”;
- (b) by repealing “absence or”.

(3) Section 5(1) of Schedule 2 is amended by adding “, and in such manner (including by electronic means),” after “times and places”.

(4) Section 5(2) of Schedule 2 is amended by repealing “meetings of the Board is 4” and substituting “a meeting of the Board is 4 members present at the meeting”.

(5) Section 5 of Schedule 2 is amended by adding—

“(5) A member of the Board is to be regarded as being present at a meeting of the Board, even though the member does not attend the meeting in person, if—

- (a) the member participates in the meeting by telephone, video conferencing or other electronic means; and



(b) the member is able to communicate with the other members attending or participating in the meeting and they are able to communicate with that member.

(6) A member who participates in a meeting of the Board by telephone, video conferencing or other electronic means may cast a vote by the same electronic means.

(7) Subsection (4)(a) and (c) applies even though the Chairman of the Board participates in the meeting by telephone, video conferencing or other electronic means.”.

(6) Section 6 of Schedule 2 is repealed and the following substituted—

**“6. Transaction of business by  
circulation of papers**

(1) The Board may transact any of its business by circulation of papers.

(2) A resolution in writing which is approved in writing by a majority of the members of the Board is as valid and effectual as if it had been duly passed at a meeting of the Board by the votes of the members of the Board so approving the resolution.

(3) A facsimile or an electronically transmitted document that bears the signature of a member of the Board is to be regarded as having been approved in writing by that member.

(4) To avoid doubt, a reference to circulation of papers in this section includes circulation of information by electronic means.”.

**13. Schedule 4 amended (Contributions to Fund)**

(1) Schedule 4 is amended by repealing “[ss. 2, 15 & 54]” and substituting “[ss. 2, 15, 48 & 54]”.

(2) Section 1(1) of Schedule 4 is amended by repealing the definition of “amount of relevant deposits” and substituting—

““amount of relevant deposits” (有關存款款額), in relation to a Scheme member, means, subject to subsection (2), the aggregate amount held by all depositors of the Scheme member, being the sum arrived at by adding up any of the following amounts held by each of the depositors of the Scheme member—

(a) the amount by which the amount of all relevant deposits held by one person, as a depositor, with the Scheme member in that person’s own right exceeds the amount of relevant liabilities owed by the person to the Scheme member (if any), up to a limit of \$500,000;



- (d) a reference to the amount of relevant liabilities owed by a depositor to a Scheme member is any amount the Scheme member may specify, being an amount within the range of 0% to 100% of the liabilities, other than future or contingent liabilities, owed by the depositor to the Scheme member (“relevant liabilities”), but does not include any interest accrued on the relevant liabilities;
- (e) for the purposes of paragraph (a) of that definition, if a relevant liability owed by a person (being a depositor, or being one of the persons whom a depositor consists of) to a Scheme member forms part of a liability owed by 2 or more persons to the Scheme member—
  - (i) subject to subparagraph (ii), each of the 2 or more persons is deemed to have an equal share in the liability unless the contrary is proved to the satisfaction of the Board; and
  - (ii) if the 2 or more 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
- (f) for the purposes of paragraphs (b) and (d) of that definition, if a relevant liability is owed by a depositor, consisting of 2 or more persons, to a Scheme member, 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.”.

(4) Section 2(3) of Schedule 4 is amended by repealing “0.3%” and substituting “0.25%”.

(5) Section 3(5) of Schedule 4 is amended, in column 2 of the Table—

- (a) by repealing “0.05%” and substituting “0.0175%”;
- (b) by repealing “0.08%” and substituting “0.028%”;
- (c) by repealing “0.11%” and substituting “0.0385%”;
- (d) by repealing “0.14%” and substituting “0.049%”.

PART 3

CONSEQUENTIAL AND RELATED AMENDMENTS

**14. Consequential and related amendments**

The enactments specified in the Schedule are amended as set out in that Schedule.

SCHEDULE

[s. 14]

CONSEQUENTIAL AND RELATED AMENDMENTS

**Companies Ordinance**

**1. Section 227E amended (Proof of debts)**

(1) Section 227E(1) of the Companies Ordinance (Cap. 32) is amended, in the Chinese text, by repealing “存戶” and substituting “存款人”.

(2) Section 227E is amended by adding—

“(4) In subsection (1), the expressions “deposit” (存款) and “depositor” (存款人) have the same meaning as in section 265(6).”.

**2. Section 265 amended (Preferential payments)**

(1) Section 265(1)(*db*)(i) is amended by repealing “\$100,000” and substituting “the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581)”.

(2) Section 265(1)(*db*)(ii) is amended by repealing “\$100,000” and substituting “the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581)”.

(3) Section 265(1)(*db*)(iii) is amended by repealing “\$100,000” and substituting “the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581)”.

(4) Section 265(1)(*db*)(iv) is amended by repealing “\$100,000” and substituting “the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(2) of the Deposit Protection Scheme Ordinance (Cap. 581)”.

(5) Section 265(5J)(b) is amended by repealing “\$100,000” and substituting “the limit on the total amount of compensation to which a person is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581)”.

(6) Section 265(5J) is amended by repealing “be \$100,000.” and substituting “be that limit prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581).”.

(7) Section 265(6) is amended, in the definition of “deposit” and “depositor”, by repealing “Banking Ordinance (Cap. 155)” and substituting “Deposit Protection Scheme Ordinance (Cap. 581)”.

(8) Section 265 is amended by adding—

“(11) The Schedule to the Deposit Protection Scheme (Amendment) Ordinance 2010 ( of 2010) applies in the case of a winding up where the relevant date occurred before the commencement of that Schedule but the specified event within the meaning of section 22(1) of the Deposit Protection Scheme Ordinance (Cap. 581) occurs on or after the commencement of that Schedule.”.

### **Explanatory Memorandum**

The main object of this Bill is to amend the Deposit Protection Scheme Ordinance (Cap. 581) (“the Ordinance”) to increase the protection for depositors under the Deposit Protection Scheme (“the Scheme”).

#### **Part 1—Preliminary**

2. Clauses 1 and 2 provide respectively for the short title and the commencement of the Bill when enacted.

#### **Part 2—Amendments to Deposit Protection Scheme Ordinance**

3. Clause 3 seeks to expand the product coverage of the Scheme. It amends the definition of “deposit” in section 2(1) of the Ordinance to include a loan of money subject to any security referable to the provision of any banking or financial services, so that those secured deposits will be protected under the Scheme.

4. On the other hand, clause 4 provides for a higher protection limit under the Scheme. It amends section 27 of the Ordinance to raise the limit on the total amount of compensation to which a depositor is entitled under the Scheme from \$100,000 to \$500,000. Correspondingly, clause 8 amends section

38 of the Ordinance so that the right to which the Hong Kong Deposit Protection Board (“the Board”) may subrogate upon making a payment of compensation to a depositor, in so far as it relates to the interest accrued on the payment, is to be determined on the basis of this new protection limit of \$500,000.

5. Under the amended section 27 of the Ordinance, the Board may also determine the value of annuities and future and contingent liabilities, and may determine the amount of interest accrued on deposits or liabilities, by making an estimate in certain circumstances (for instance, to avoid undue delay in the payment of compensation to a depositor).

6. Clause 5 replaces section 35 of the Ordinance by a new provision, accordingly, which seeks to adjust the maximum amount of compensation that may be paid to a depositor in the case that an estimate has been made by the Board to determine the value of annuities and future and contingent liabilities, or the amount of interest accrued on deposits or liabilities, for the purpose of calculating the amount of compensation payable to the depositor. Clause 7 then amends section 37 of the Ordinance to enable the Board to recover from a depositor any amount paid in excess to the depositor because of an over-estimation of the amount of compensation to which the depositor is entitled.

7. Clause 6 amends section 36 of the Ordinance to make it clear that the Board may make different amounts of interim payments to different depositors or different classes of depositors.

8. Clause 13 seeks to reduce the additional annual costs incurred by Scheme members as a result of the increased protection under the Scheme by—

- (a) amending section 1 of Schedule 4 to the Ordinance to allow any amount of the relevant liabilities owed by a depositor to a Scheme member to be deducted from that depositor’s relevant deposits (but the net amount for each depositor is not to exceed \$500,000) in calculating, for the purposes of contributions assessment under that Schedule, the aggregate amount of relevant deposits maintained with that Scheme member;
- (b) amending section 2 of Schedule 4 to the Ordinance to lower the specified percentage, from 0.3% to 0.25%, for calculating the target fund size of the Deposit Protection Scheme Fund; and
- (c) amending section 3 of Schedule 4 to the Ordinance to reduce the percentages specified for calculating the build-up levies payable by Scheme members each year.

9. Clause 9 amends section 48 of the Ordinance to empower the Board to require Scheme members to submit returns showing the amounts of relevant deposits maintained with and relevant liabilities owed to those members and the breakdown of those amounts.

10. Besides, clause 10 amends section 51 of the Ordinance to provide further powers for the Board to make rules concerning the notifications and the acknowledgments of notifications as to whether a deposit or any other financial product is or is not protected under the Scheme, and also to make rules concerning the restrictions on describing or representing any financial product as a deposit or a specified kind of deposit.

11. Clause 12 amends Schedule 2 to the Ordinance to allow meetings and other business of the Board to be conducted by electronic means, whether the members of the Board are in Hong Kong or not.

12. Clause 11 adds a new section 56 to the Ordinance, which deals with transitional provisions.

### **Part 3—Consequential and Related Amendments**

13. Clause 14 and the Schedule deal with consequential and related amendments. In particular, section 265 of the Companies Ordinance (Cap. 32) is amended so that the preferential payment for a depositor, in case of the winding up of a bank, is not to exceed the limit on the total amount of compensation to which the depositor is entitled as prescribed in section 27 of the Ordinance as amended by clause 4 (i.e. \$500,000).