

立法會
Legislative Council

LC Paper No. CB(1)655/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/SS/4/10/2

**Subcommittee on Deposit Protection Scheme (Representation on Scheme
Membership and Protection of Financial Products under Scheme)
(Amendment) Rules 2010**

**First meeting on
Thursday, 4 November 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon WONG Ting-kwong, BBS, JP

Members absent : Hon Audrey EU Yuet-mee, SC, JP
Hon CHIM Pui-chung

Public officers : Mr Adrian LAM
Attending 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

Attendance by Invitation : Ms Meena DATWANI
Chief Executive Officer
Hong Kong Deposit Protection Board

Ms Tess LEUNG
Deputy Chief Executive Officer (Operations)
Hong Kong Deposit Protection Board

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

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mr Daniel SIN
Senior Council Secretary (1)7

Ms Haley CHEUNG
Legislative Assistant (1)8

I Election of Chairman

Mr Albert HO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr CHAN Kam-lam was nominated by Mr WONG Ting-kwong and the nomination was seconded by Mr Albert HO. Mr CHAN Kam-lam accepted the nomination. There being no other nomination, Mr CHAN Kam-lam was elected Chairman of the Subcommittee.

II Meeting with the Administration

(L.N. 131 of 2010

— Deposit Protection Scheme Ordinance (Chapter 581) –
Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) (Amendment) Rules 2010

B9/2/2C

— Legislative Council Brief on Deposit Protection Scheme Ordinance (Chapter 581) – Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) (Amendment) Rules 2010 issued by the Financial Services and the Treasury Bureau

LC Paper No. LS2/10-11

— Legal Service Division report on Subsidiary Legislation and Non-Legislative Instrument gazetted on 15 October 2010

LC Paper No. CB(1)323/10-11(01)

— Marked-up copy of the Deposit Protection Scheme Ordinance (Chapter 581) – Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) (Amendment) Rules 2010 prepared by the Legal Service Division

LC Paper No. CB(1)322/10-11

— Background brief on Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) (Amendment) Rules 2010 prepared by the Legislative Council Secretariat)

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

III Any other business

Way forward

4. The Chairman said that the Subcommittee had completed the scrutiny of the Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) (Amendment) Rules 2010 (L.N. 131 of 2010) (Amendment Rules). He would give a verbal report to the House Committee on 5 November 2010.

5. Members noted that the Administration would move a resolution on 17 November 2010 to introduce amendments to the Amendment Rules. Subject to the resolution being passed, the Amendment Rules would take effect on 1 January 2011 except for the proposed section 6E (on restricting the use of the term "structured deposit") in section 11 of the Amendment Rules, which would not have effect in relation to any financial product described as a structured deposit at any time before 1 July 2011.

6. There being no other business, the meeting ended at 9:32 am.

Council Business Division 1
Legislative Council Secretariat
3 December 2010

**Proceedings of the Subcommittee on Deposit Protection Scheme
(Representation on Scheme Membership and
Protection of Financial Products under Scheme) (Amendment) Rules 2010
First meeting on Thursday, 4 November 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000010 – 000156	Mr Albert HO Mr WONG Ting-kwong Mr CHAN Kam-lam	Election of Chairman	
000157 – 000935	Chairman Administration	Briefing by the Administration on the legislative proposals.	
000936 – 001029	Mr WONG Ting-kwong Chairman Mr Albert HO	Members raised no questions on the policy objective of the Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) (Amendment) Rules 2010 (Amendment Rules).	
001030 – 002152	Administration Chairman Mr Albert HO Mr WONG Ting-kwong	<p>Clause-by-clause examination of the Amendment Rules</p> <p><u>Section 1 – Commencement</u></p> <p><u>Section 2 – Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules amended</u></p> <p><u>Section 3 – Part 1 heading added</u></p> <p><u>Section 4 – Section 2 amended (Interpretation)</u></p> <p><u>Section 5 – Part 2 heading added</u></p> <p><u>Section 6 – Section 3 amended (Display of Membership Sign)</u></p> <p><u>Section 7 – Section 4 amended (Membership representations in advertisements)</u></p> <p><u>Section 8 – Part 3 heading added</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Section 9 – Section 5 amended (Disclosure as to financial products offered before commencement of these Rules)</u></p> <p><u>Section 10 – Section 6 amended (Disclosure as to financial products offered on or after commencement of these Rules)</u></p> <p>Members raised no question on Sections 1 to 10, but noted that the Administration would move an amendment to replace "the commencement of these Rules" in section 6(4)(b)(i) of the Representation Rules by "25 September 2006".</p> <p><u>Section 11 – Sections 6A to 6E added</u></p> <p><i>6A. Disclosure as to financial products offered on or after 1 January 2011</i></p> <p>(a) Members considered that it was important to send written notification to investors of non-protected financial products about the non-protection status of the products even if a notification had been made by telephone before the transaction.</p> <p>(b) Mr HO asked how the proposed section 6A(3) and (4) would facilitate investors to be aware of the disclosure details.</p> <p>(c) The Administration clarified that if a member of the Deposit Protection Scheme (Scheme) offered a financial product (that was advertized as a deposit but was not protected under the Scheme) through telephone or electronic means, a negative disclosure notification should be served by the same means or in writing. If the financial product is offered by any other means, the negative disclosure notification should be made in writing.</p> <p>(d) In response to Mr WONG, the Administration said it was customary for a Scheme member to keep the recordings of telephone transactions for two years.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(e) The Chairman suggested that in cases where a transaction was made through telephone, the Scheme member should also serve a written notice on the non-protection status of the product to the client concerned after the transaction. Other members supported the suggestion.</p> <p>(f) The Administration agreed to review the relevant guidelines for Scheme members to reflect members' suggestions.</p>	
002153 – 002755	Administration Mr Albert HO Mr WONG Ting-kwong Chairman	<p><i>6B. Disclosure not required in case of automatic re-investment of financial products</i></p> <p>(a) Mr HO suggested that, in an automatic rollover, a written notification of negative disclosure should also be provided to remind the clients in case they overlooked, or misunderstood the non-protection status of the financial product they were holding; it might not be necessary for them to acknowledge the notification.</p> <p>(b) Mr WONG said that Scheme members usually issued statements to clients regarding their accounts and transactions. Negative disclosure notification could be inserted as explanatory notes in such documents. In addition, standard wording on the protection status of different products could be developed.</p> <p>(c) Mr HO suggested that such notification could be in the form of standard labels.</p> <p>(d) The Administration undertook to review the guidelines to ensure that such standard wording would be provided to Scheme members.</p> <p>(e) Mr HO suggested that the additional requirement of serving a written notice on negative disclosure after each transaction should be specified in the Representation Rules.</p>	

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		<p>(f) The Administration pointed out that the additional notification requirement would involve substantial changes to Scheme members' existing operations. They might not be ready to implement the suggested additional notification requirement by 1 January 2011 when the Amendment Rules came into operation.</p> <p>(g) The Administration suggested including the additional written notification requirement in the relevant guidelines for Scheme members with an expected implementation date.</p> <p>(h) The Chairman asked if the Hong Kong Deposit Protection Board (HKDPB) would screen each financial product and certify whether a product was covered under the Scheme, and what standard negative disclosure wording should be attached to those products.</p> <p>(i) The Administration explained that the law had already stated clearly which products were covered under the Scheme and HKDPB's additional screening was not necessary.</p>	
002756 – 002954	Administration Mr Albert HO	<p><i>6C. Disclosure not required if person who invests in financial products is not natural person</i></p> <p>In response to Mr HO's enquiry, the Administration clarified that the proposed section 6C would exempt Scheme members from the requirement of giving negative disclosure to investors who were not "natural persons" after each transaction that was made on or after 1 January 2011.</p>	
002955 – 004024	Administration Mr Albert HO Mr WONG Ting-kwong Chairman	<p><i>6D. Disclosure not required if money is invested in financial products for payment purpose</i></p> <p>Members raised no question on the proposed section 6D.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>6E. Descriptions or representations of financial products as structured deposits</i></p> <p>In response to Mr HO's enquiry on the purpose of the proposed section 6E, the Administration explained that a Scheme member could terminate some fixed term deposits before they matured. These deposits were protected under the Scheme although they were sometimes advertized as "structured deposits", which gave an impression that the product was not protected under the Scheme. The proposed section 6E would remove the confusion.</p>	
004025 – 005419	Administration Mr Albert HO Mr WONG Ting-kwong	<p><u>Section 12 – Part 4 added</u></p> <p><i>6F. Display of notice of types of deposit qualified for protection by Scheme</i></p> <p><i>6G. Disclosure as to deposits maintained immediately before 1 January 2011 that are qualified for protection by Scheme</i></p> <p><i>6H. Disclosure as to deposits placed or to be placed on or after 1 January 2011 that are qualified for protection by Scheme</i></p> <p><i>6I. Disclosure not required in case of automatic renewal of deposit</i></p> <p><i>6J. Disclosure not required if notice already given in respect of deposit</i></p> <p><i>6K. Disclosure not required if deposit is held for account of Exchange Fund or held by excluded person</i></p> <p>Members raised no question on Section 12 (proposed sections 6F to 6K).</p> <p><u>Section 13 – Part 5 heading added</u></p> <p><u>Section 14 – Section 7 amended (Disclosure when deposits are no longer protected by Scheme)</u></p> <p>Members raised no question on Sections 13 and 14.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Section 15 – Section 7A added</u></p> <p><i>7A. Requests for information as to whether deposits are protected by Scheme</i></p> <p>(a) Mr HO said the time a Scheme member was allowed to reply to an investor's oral or written enquiry about whether a financial product was protected, was too long.</p> <p>(b) The Administration explained that Scheme members were often able to give a reply before the time limit. More time was allowed in the Amendment Rules because Scheme members might need time to verify details of an enquiry and to ensure that the reply complied with the relevant statutory requirements.</p> <p>(c) The Administration added that if a Scheme member received many enquiries at the same time or within a short period of time, it would need time to clear the backlog.</p> <p>(d) Mr HO and Mr WONG said the enquiries should be simple in nature and a Scheme member should be able to confirm readily whether a financial product held by a client was protected by the Scheme.</p> <p>(e) Mr WONG said a sudden increase in the number of enquiries about a financial product probably signalled problems in the market. It was all the more important for Scheme members to respond quickly to fortify clients' confidence.</p> <p>(f) Members noted that failure to give a reply within the time specified in the proposed section 7A was not an offence.</p> <p>(g) Mr HO suggested that the time limits should be reduced to three business days for giving an oral reply, and seven business days for a written reply.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(h) The Administration accepted members' suggestion and would move amendments accordingly.	
005420 – 005708	Administration Mr Albert HO	<u>Section 16 – Part 6 heading added</u> <u>Section 17 – Section 7B added</u> <i>7B. Requirements as to notice given or displayed under these Rules</i> <u>Section 18 – Section 8 amended (Offences)</u> <u>Section 19 – Schedule substituted</u> Members raised no question on Sections 16 to 19.	
005709 – 005829	Chairman Mr Albert HO Mr WONG Ting-kwong Administration Clerk	The Chairman said that the Subcommittee had completed the scrutiny of the Amendment Rules and would give a verbal report to the House Committee on 5 November 2010.	
005830 – 010030	Chairman Administration Clerk	Legislative timetable The Administration would move a resolution on 17 November 2010 to introduce amendments to the Amendment Rules as agreed at the meeting.	