

L.N. 131 of 2010

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

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L.N. 131 of 2010

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

(Made by the Hong Kong Deposit Protection Board under section 51 of the Deposit Protection Scheme Ordinance (Cap. 581) after consultation with the Financial Secretary and The Hong Kong Association of Banks)

1. Commencement

These Rules come into operation on 1 January 2011.

2. Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules amended

The Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (Cap. 581 sub. leg. A) are amended as set out in sections 3 to 19.

3. Part 1 heading added

Before section 1—

Add

“Part 1

Preliminary”.

4. Section 2 amended (Interpretation)

(1) Section 2—

Renumber the section as section 2(1).

(2) After section 2(1)—

Add

“(2) A reference in these Rules to a deposit qualified for protection by the Scheme is to be construed as a deposit denominated in any currency and maintained with a Scheme member, but does not include a deposit specified in section 1(a), (aa), (b), (c) or (d) of Schedule 1 to the Ordinance.”.

5. Part 2 heading added

After section 2—

Add

“Part 2

Disclosure as to Scheme Membership”.

6. Section 3 amended (Display of Membership Sign)

Section 3(2)(c)(ii), after “protected deposit”—

Add

“or a deposit qualified for protection by the Scheme”.

7. Section 4 amended (Membership representations in advertisements)

(1) Section 4(1)(b)(ii), after “protected deposit”—

Add

“or a deposit qualified for protection by the Scheme”.

(2) Section 4(2)(b)—

Repeal

“HK\$100,000”

Substitute

“HK\$500,000”.

(3) Section 4(3)—

Repeal

“protected deposit,”

Substitute

“deposit qualified for protection by the Scheme,”.

8. Part 3 heading added

After section 4—

Add

“Part 3

**Disclosure as to Financial Products Not Protected
by Scheme”.**

9. Section 5 amended (Disclosure as to financial products offered before commencement of these Rules)

(1) Section 5, heading—

Repeal

“commencement of these Rules”

Substitute

“25 September 2006”.

(2) Section 5(1)(a)—

Repeal

“the commencement of these Rules”

Substitute

“25 September 2006”.

- (3) Section 5(1)(b)—

Repeal

“commencement”

Substitute

“date”.

- (4) Section 5(2)—

Repeal

“after the commencement of these Rules”

Substitute

“beginning on 25 September 2006”.

10. Section 6 amended (Disclosure as to financial products offered on or after commencement of these Rules)

- (1) Section 6, heading—

Repeal

“commencement of these Rules”

Substitute

“25 September 2006 but before 1 January 2011”.

- (2) Section 6(1)—

Repeal

“the commencement of these Rules”

Substitute

“25 September 2006 but before 1 January 2011”.

(3) Section 6(5), English text—

Repeal

“in which”

Substitute

“by which”.

11. Sections 6A to 6E added

After section 6—

Add

“6A. Disclosure as to financial products offered on or after 1 January 2011

- (1) This section applies where a financial product offered by a Scheme member on or after 1 January 2011 is not a protected deposit but has been described as a deposit in any advertisement, promotional material or document, whether published by electronic, telecommunications or other means.
- (2) Where the financial product is a bearer instrument, the Scheme member must include in the bearer certificate a statement that the financial product is not a protected deposit and is not protected by the Scheme.
- (3) Subject to sections 6B, 6C and 6D, where the financial product is not a bearer instrument, the Scheme member must, before a person invests in the financial product—
 - (a) if the financial product is offered to the person by telephone or electronic mail transmission or through the Internet—

- (i) notify the person in accordance with subsection (4)(a) that the financial product is not a protected deposit and is not protected by the Scheme; and
 - (ii) obtain the person's acknowledgment of the notice in accordance with subsection (4)(b); or
 - (b) if the financial product is offered to the person by any other means—
 - (i) notify the person in accordance with subsection (5)(a) that the financial product is not a protected deposit and is not protected by the Scheme; and
 - (ii) obtain the person's acknowledgment of the notice in accordance with subsection (5)(b).
- (4) The notice given under subsection (3)(a)—
 - (a) must—
 - (i) comply with the requirements in section 7B(1); or
 - (ii) be given by the means by which the offer is made; and
 - (b) must be acknowledged by the person—
 - (i) in writing that the person has received and understands the notice; or
 - (ii) if the notice is given otherwise than in writing, by the means by which the notice is given that the person has received and understands the notice.
- (5) The notice given under subsection (3)(b)—
 - (a) must comply with the requirements in section 7B(1); and

(b) must be acknowledged by the person in writing that the person has received and understands the notice.

(6) In this section—

financial product (金融產品) does not include a deposit specified in section 1(e), (f), (g) or (h) of Schedule 1 to the Ordinance.

6B. Disclosure not required in case of automatic re-investment of financial products

(1) A Scheme member is not required to notify a person under section 6A(3) in respect of a financial product referred to in that section before the person invests in the financial product if—

(a) the investment (*current investment*) is an automatic re-investment of the investment in the financial product made by the person immediately before the current investment (*preceding investment*) on the maturity of the preceding investment (whether or not the preceding investment is also an automatic re-investment of an earlier investment or a series of investments in the financial product made by the person immediately before the preceding investment on the maturity of that earlier investment or the last investment in that series);

(b) the Scheme member has—

(i) if the person makes the preceding investment or makes that earlier investment or any investment in that series on or after 1 January 2011, notified the person under section 6A(3) before the person makes that investment that the financial product is not a protected

deposit and is not protected by the Scheme, and will remain so in the case of any automatic re-investment of that investment;

- (ii) if the person has made the preceding investment or made that earlier investment or any investment in that series on or after 25 September 2006 but before 1 January 2011, notified the person under section 6(3) that the financial product is not a protected deposit and is not protected by the Scheme, and made a request for acknowledgment in accordance with section 6(5) or (6)(b), before the person makes that investment; or
 - (iii) if the person has made the preceding investment or made that earlier investment or any investment in that series before 25 September 2006, notified the person under section 5(2) that the financial product is not a protected deposit and is not protected by the Scheme; and
- (c) the person has, if the Scheme member has notified the person under section 6A(3) as referred to in paragraph (b)(i), acknowledged in accordance with section 6A(4)(b) or (5)(b) that the person has received and understands the notice.
- (2) A reference in subsection (1) to an automatic re-investment of a preceding investment in the financial product is to be construed as the automatic re-investment, without having to take the person's further instructions for the purpose of the automatic re-investment, of—
- (a) the preceding investment, or a portion of the preceding investment;

- (b) the interest accrued on or premium received from the preceding investment, or a portion of the interest so accrued or premium so received; or
 - (c) the aggregate of the preceding investment and the interest so accrued or premium so received, or a portion of the aggregate,
- and an automatic re-investment of an earlier investment or a series of investments in the financial product is to be construed accordingly.

6C. Disclosure not required if person who invests in financial products is not natural person

A Scheme member is not required to notify a person under section 6A(3) in respect of a financial product referred to in that section before the person invests in the financial product if—

- (a) the person is not a natural person (whether being a company, partnership, sole proprietorship or otherwise);
- (b) the person has maintained an account with the Scheme member and the financial product is to be invested under that account;
- (c) the Scheme member has—
 - (i) if the person has previously made another investment in the financial product under that account on or after 1 January 2011, notified the person under section 6A(3) before the person makes that other investment that the financial product is not a protected deposit and is not protected by the Scheme;

- (ii) if the person has previously made another investment in the financial product under that account on or after 25 September 2006 but before 1 January 2011, notified the person under section 6(3) that the financial product is not a protected deposit and is not protected by the Scheme, and made a request for acknowledgment in accordance with section 6(5) or (6)(b), before the person makes that other investment; or
- (iii) if the person has previously made another investment in the financial product under that account before 25 September 2006, notified the person under section 5(2) that the financial product is not a protected deposit and is not protected by the Scheme;
- (d) the person has, if the Scheme member has notified the person under section 6A(3) as referred to in paragraph (c)(i), acknowledged in accordance with section 6A(4)(b) or (5)(b) that the person has received and understands the notice; and
- (e) the Scheme member gives a notice to the person, at least once a year, in writing or by telephone or electronic mail transmission or through the Internet, notifying the person that the financial product is not a protected deposit and is not protected by the Scheme.

6D. Disclosure not required if money is invested in financial products for payment purpose

A Scheme member is not required to notify a person under section 6A(3) in respect of a financial product referred to in that section before the person invests in the financial product if—

- (a) the person has maintained an account with the Scheme member and the financial product is to be invested under that account;
- (b) the money invested in the financial product is to be used for payment in relation to any banking or financial services provided to the person by the Scheme member;
- (c) the Scheme member has—
 - (i) if the person has previously made another investment in the financial product under that account on or after 1 January 2011, notified the person under section 6A(3) before the person makes that other investment that the financial product is not a protected deposit and is not protected by the Scheme;
 - (ii) if the person has previously made another investment in the financial product under that account on or after 25 September 2006 but before 1 January 2011, notified the person under section 6(3) that the financial product is not a protected deposit and is not protected by the Scheme, and made a request for acknowledgment in accordance with section 6(5) or (6)(b), before the person makes that other investment; or
 - (iii) if the person has previously made another investment in the financial product under that account before 25 September 2006, notified the person under section 5(2) that the financial product is not a protected deposit and is not protected by the Scheme;

- (d) the person has, if the Scheme member has notified the person under section 6A(3) as referred to in paragraph (c)(i), acknowledged in accordance with section 6A(4)(b) or (5)(b) that the person has received and understands the notice; and
- (e) the Scheme member gives a notice to the person, at least once a year, in writing or by telephone or electronic mail transmission or through the Internet, notifying the person that the financial product is not a protected deposit and is not protected by the Scheme.

6E. Descriptions or representations of financial products as structured deposits

- (1) A Scheme member may not describe any financial product offered by it as a structured deposit, or otherwise make any representation in respect of any financial product offered by it that indicates or would reasonably be construed as indicating that the financial product is a structured deposit, if that financial product does not fall within section 2A of Schedule 1 to the Ordinance.
- (2) This section does not have effect in relation to any financial product offered by a Scheme member that is described as, or in respect of which any representation is made that indicates or would reasonably be construed as indicating that it is, a structured deposit at any time before 1 July 2011.”.

12. Part 4 added

After section 6E—

Add

“Part 4

Disclosure as to Deposits Qualified for Protection by Scheme

6F. Display of notice of types of deposit qualified for protection by Scheme

- (1) A Scheme member must display a notice in accordance with subsections (2) and (3) notifying the public of the types of deposit maintained with the Scheme member immediately before 1 January 2011 that are qualified for protection by the Scheme from 1 January 2011 onwards.
- (2) The notice referred to in subsection (1) must be displayed, for a period of at least 60 days beginning on 1 January 2011, at each of the relevant places of business of the Scheme member—
 - (a) in such a manner that the notice is reasonably visible to any person entering the place; and
 - (b) if the Scheme member is not the only person carrying on business at the address of the relevant place of business, at such a location, and in such a manner, that any person entering the place should reasonably be aware that the notice is applicable to the Scheme member only, but not any other person.
- (3) The notice displayed under this section must comply with the requirements in section 7B(2).

6G. Disclosure as to deposits maintained immediately before 1 January 2011 that are qualified for protection by Scheme

- (1) This section applies where—

- (a) a person has maintained a deposit with a Scheme member immediately before 1 January 2011 that is qualified for protection by the Scheme from 1 January 2011 onwards; and
 - (b) a statement of the deposit, or a statement of the account under which the deposit is held, is to be issued to the person within 90 days beginning on 1 January 2011.
- (2) Subject to section 6K, the Scheme member must—
- (a) in any such statement of the deposit or account; or
 - (b) in a separate notice to be issued to the person within 90 days beginning on 1 January 2011, notify the person in accordance with subsection (3) that the deposit is a deposit qualified for protection by the Scheme.
- (3) The notice given under subsection (2) must comply with the requirements in section 7B(1).

6H. Disclosure as to deposits placed or to be placed on or after 1 January 2011 that are qualified for protection by Scheme

- (1) This section applies where a deposit placed or to be placed by a person with a Scheme member on or after 1 January 2011 is a deposit qualified for protection by the Scheme.
- (2) Subject to sections 6I, 6J and 6K, where the person—
 - (a) opens an account with the Scheme member on or after 1 January 2011 and the deposit is to be placed under that account, the Scheme member must before, or within 30 days beginning on the date on which, the person opens that account—

- (i) if the account is opened by telephone or electronic mail transmission or through the Internet, notify the person in accordance with subsection (3) that the deposit to be placed under that account is a deposit qualified for protection by the Scheme; or
 - (ii) if the account is opened by any other means, notify the person in accordance with subsection (5) that the deposit to be placed under that account is a deposit qualified for protection by the Scheme; or
- (b) places or is to place the deposit with the Scheme member on or after 1 January 2011, the Scheme member must before, or within 30 days beginning on the date on which, the person places the deposit—
 - (i) if the deposit is placed or to be placed by telephone or electronic mail transmission or through the Internet, notify the person in accordance with subsection (4) that the deposit is a deposit qualified for protection by the Scheme; or
 - (ii) if the deposit is placed or to be placed by any other means, notify the person in accordance with subsection (5) that the deposit is a deposit qualified for protection by the Scheme.
- (3) The notice given under subsection (2)(a)(i) must—
 - (a) comply with the requirements in section 7B(1); or
 - (b) be given by the means by which the account is opened.
- (4) The notice given under subsection (2)(b)(i) must—
 - (a) comply with the requirements in section 7B(1); or

(b) be given by the means by which the deposit is placed or to be placed.

(5) The notice given under subsection (2)(a)(ii) or (b)(ii) must comply with the requirements in section 7B(1).

6I. Disclosure not required in case of automatic renewal of deposit

(1) A Scheme member is not required under section 6H(2)(b) to notify a person in respect of a deposit qualified for protection by the Scheme placed or to be placed by the person if—

(a) the deposit qualified for protection by the Scheme (*current deposit*) is an automatic renewal of the deposit qualified for protection by the Scheme placed by the person immediately before the current deposit (*preceding deposit*) on the maturity of the preceding deposit (whether or not the preceding deposit is also an automatic renewal of an earlier deposit qualified for protection by the Scheme or a series of deposits qualified for protection by the Scheme placed by the person immediately before the preceding deposit on the maturity of that earlier deposit or the last deposit in that series); and

(b) the Scheme member has notified the person under section 6H(2)(b) in respect of the preceding deposit, or that earlier deposit or any deposit in that series, placed on or after 1 January 2011 that the preceding deposit, or that earlier deposit or that deposit in that series, is qualified for protection by the Scheme.

- (2) A reference in subsection (1)(a) to an automatic renewal of a preceding deposit is to be construed as the automatic renewal, without having to take the person's further instructions for the purpose of the automatic renewal, of—
- (a) the preceding deposit, or a portion of the preceding deposit;
 - (b) the interest accrued on or premium received from the preceding deposit, or a portion of the interest so accrued or premium so received; or
 - (c) the aggregate of the preceding deposit and the interest so accrued or premium so received, or a portion of the aggregate,
- and an automatic renewal of an earlier deposit or a series of deposits is to be construed accordingly.

6J. Disclosure not required if notice already given in respect of deposit

A Scheme member is not required under section 6H(2)(b) to notify a person in respect of a deposit qualified for protection by the Scheme placed or to be placed by the person if—

- (a) the person has maintained an account with the Scheme member and the deposit is placed or to be placed under that account; and
- (b) the Scheme member has—
 - (i) notified the person under section 6H(2)(a) that the deposit to be placed under that account is a deposit qualified for protection by the Scheme;
 - (ii) notified the person under section 6H(2)(a) that another deposit (being a deposit of the same type as that of the deposit placed or to

be placed under that account) to be placed under that account is a deposit qualified for protection by the Scheme;

- (iii) notified the person under section 6H(2)(b) in respect of another deposit (being a deposit of the same type as that of the deposit placed or to be placed under that account) placed under that account that that other deposit is a deposit qualified for protection by the Scheme;
- (iv) subject to subparagraph (v), if the person has maintained another deposit (being a deposit of the same type as that of the deposit placed or to be placed under that account) under that account immediately before 1 January 2011, specified the type of that other deposit in the notice displayed by the Scheme member under section 6F; or
- (v) if the person has maintained another deposit (being a deposit of the same type as that of the deposit placed or to be placed under that account) under that account immediately before 1 January 2011 and a statement of that other deposit or a statement of that account is to be issued under section 6G(1)(b), notified the person under section 6G(2) that that other deposit is a deposit qualified for protection by the Scheme.

6K. Disclosure not required if deposit is held for account of Exchange Fund or held by excluded person

A Scheme member is not required under section 6G(2) or 6H(2)(a) or (b) to notify a person in respect of a deposit qualified for protection by the Scheme maintained, placed or to be placed by the person if the deposit is or is to be—

- (a) held for the account of the Exchange Fund; or
- (b) held by an excluded person as defined in section 3 of Schedule 1 to the Ordinance.”.

13. Part 5 heading added

After section 6K—

Add

“Part 5

Other Disclosure Requirements”.

14. Section 7 amended (Disclosure when deposits are no longer protected by Scheme)

(1) Section 7(1)—

Repeal

“protected deposit is”

Substitute

“deposit qualified for protection by the Scheme is”.

(2) Section 7—

Repeal subsection (2)

Substitute

“(2) The notice given under subsection (1)—

- (a) must comply with the requirements in section 7B(1); and
- (b) must be acknowledged by the person in writing that the person has received and understands the notice.”.

(3) Section 7(3)(a)—

Repeal

“protected deposit”

Substitute

“deposit qualified for protection by the Scheme”.

(4) Section 7(3)(b)—

Repeal

everything after “service,”

Substitute

“to the effect that the deposit is no longer a deposit qualified for protection by the Scheme.”.

15. Section 7A added

After section 7—

Add

“7A. Requests for information as to whether deposits are protected by Scheme

(1) This section applies where a financial product offered by a Scheme member before, on or after 1 January 2011 is described as a deposit in any advertisement, promotional material or document, whether published by electronic, telecommunications or other means.

(2) Where the Scheme member receives a request from a person holding the financial product for confirmation as to whether the financial product is protected by the Scheme—

- (a) if the request is made orally, the Scheme member must give a reply, either orally or in writing, in accordance with subsection (3)—
 - (i) in the case of an oral reply, within 5 business days after the date on which the request is received; or
 - (ii) in the case of a written reply, within 10 business days after the date on which the request is received; or
 - (b) if the request is made in writing or by electronic, telecommunications or other means, the Scheme member must give a written reply in accordance with subsection (3) within 10 business days after the date on which the request is received.
- (3) A reply given under subsection (2) must notify the person—
- (a) if the financial product is a deposit qualified for protection by the Scheme, that the financial product is such a deposit; or
 - (b) in any other case, that the financial product is not a protected deposit and is not protected by the Scheme.
- (4) In this section—
- business day*** (營業日) means a day other than—
- (a) a Saturday;
 - (b) a public holiday; and
 - (c) a gale warning day or black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).”.

16. Part 6 heading added

After section 7A—

Add

“Part 6

Miscellaneous”.

17. Section 7B added

Before section 8—

Add

“7B. Requirements as to notice given or displayed under these Rules

(1) The requirements in respect of a notice referred to in section 6A(4)(a)(i) or (5)(a), 6G(3), 6H(3)(a), (4)(a) or (5) or 7(2)(a) are as follows—

(a) the notice must be in writing;

(b) the notice must be printed so as to be clearly legible; and

(c) if the notice is contained in a statement or any other document—

(i) the notice must be not less prominent than the remaining text of the statement or document; and

(ii) in the case of a notice given under section 6A(3)(a) or (b), if the statement or document is divided into chapters, parts, sections or other headings, the notice must be shown in the statement or document under a separate chapter, part, section or heading on the

protection status of deposits and financial products, and that separate chapter, part, section or heading and (if it is numbered) its number must be indicated clearly in the index (if any) of the statement or document.

- (2) The requirements in respect of a notice referred to in section 6F(3) are as follows—
- (a) the notice must be in writing; and
 - (b) the notice must be printed so as to be clearly legible in English and Chinese.”.

18. Section 8 amended (Offences)

Section 8, before “or 7(1)”—

Add

“, 6A(2) or (3)”.

19. Schedule substituted

The Schedule—

Repeal the Schedule

Substitute

“Schedule

[ss. 2 & 3]

Membership Sign



CHAN WONG Shui, Pamela
Chairman,
Hong Kong Deposit Protection
Board

11 October 2010

Explanatory Note

These Rules amend the Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (Cap. 581 sub. leg. A) (*principal Rules*) to reflect the increase of the protection limit under the Deposit Protection Scheme (*Scheme*) from \$100,000 to \$500,000 with effect from 1 January 2011, as provided for by the Deposit Protection Scheme (Amendment) Ordinance 2010 (11 of 2010), and to provide for further disclosure requirements in relation to the protection status of financial products offered by Scheme members.

2. In particular, a Scheme member is required by these Rules to make known to the public that the eligible deposits taken by the Scheme member are protected by the Scheme up to the new protection limit of \$500,000 per depositor. The information in the Membership Sign specified in the principal Rules is also updated accordingly.
3. The requirements in the principal Rules on disclosure as to financial products which are described as deposits (*financial products*) but are not protected by the Scheme have been amended by these Rules. Basically, a Scheme member will be required to notify a person and obtain the person's acknowledgment before the person invests in a financial product offered by the Scheme member that is not protected by the Scheme. The notice must be prominent and comply with the requirements specified in these Rules. It is an offence if a Scheme member contravenes the above disclosure requirements.
4. However, a Scheme member does not need to give the notice before a person invests in the financial product if—
 - (a) the investment in the financial product is an automatic re-investment of a preceding investment;

- (b) the person is not a natural person (whether being a company, partnership, sole proprietorship or otherwise); or
 - (c) the money invested in the financial product is used for payment in relation to any banking or financial services.
- 5. Furthermore, a Scheme member may not describe a financial product as a structured deposit, which is not protected by the Scheme as specified in section 1 of Schedule 1 to the Deposit Protection Scheme Ordinance (Cap. 581) (*principal Ordinance*), unless the financial product falls within section 2A of Schedule 1 to the principal Ordinance. This restriction, however, does not affect any financial product that has already been described as a structured deposit at any time before 1 July 2011.
- 6. On the other hand, new provisions have been made by these Rules requiring a Scheme member to notify the public, by displaying a notice in its relevant place of business, the types of deposit maintained with the Scheme member immediately before 1 January 2011 that are qualified for protection by the Scheme from 1 January 2011 onwards. For any existing deposit maintained by a person with a Scheme member, the Scheme member has to notify the person if that existing deposit is qualified for protection by the Scheme and a statement of the deposit or a statement of the account under which the deposit is held (*bank statement*) is to be issued to the person within 90 days beginning on 1 January 2011. The Scheme member will also be required to notify a person before, or within 30 days beginning on the date on which, the person opens an account or places a deposit that is qualified for protection by the Scheme. The notice must be prominent and comply with requirements specified in these Rules. In addition to a protected deposit (defined in section 2(1) of the principal Ordinance), any deposit that would be a protected deposit had it not been held for the account of the Exchange Fund (defined in section 2(1)

of the principal Ordinance), or held by or for an excluded person (defined in section 3 of Schedule 1 to the principal Ordinance) as specified in section 1 of Schedule 1 to the principal Ordinance, is to be regarded as a deposit qualified for protection by the Scheme for the purpose of these disclosure requirements.

7. However, a Scheme member does not need to give the notice in respect of a deposit qualified for protection by the Scheme placed or to be placed by a person if—
 - (a) the deposit is an automatic renewal of a preceding deposit;
 - (b) the deposit is placed or to be placed under an account maintained with the Scheme member and a notice has already been given that the deposit, or another deposit of the same type, placed or to be placed under that account is qualified for protection by the Scheme; or
 - (c) the deposit is held for the account of the Exchange Fund or held by an excluded person.
8. A Scheme member is also required to reply within a specified time limit to a request by a person holding a financial product offered by the Scheme member for confirmation as to whether the financial product is protected by the Scheme.