

立法會
Legislative Council

LC Paper No. CB(1)538/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/15

Bills Committee on Deposit Protection Scheme (Amendment) Bill 2015

**Minutes of first meeting held on
Wednesday, 16 December 2015, at 9:00 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Christopher CHEUNG Wah-fung, SBS, JP (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Alan LEONG Kah-kit, SC
Hon Albert CHAN Wai-yip
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon SIN Chung-kai, SBS, JP

Member absent : Hon CHUNG Kwok-pan

Public Officers attending : Agenda item II
Financial Services and the Treasury Bureau
Miss Salina YAN, JP
Deputy Secretary (Financial Services) 1

Mr Jackie LIU
Principal Assistant Secretary
(Financial Services)5

Miss Tanna CHONG
Assistant Secretary (Financial Services)(5)2

Hong Kong Monetary Authority

Ms Meena DATWANI, JP
Director General (Enforcement)

Ms Tess LEUNG
Head (Deposit Protection Scheme)

Department of Justice

Miss Bonita WONG
Government Counsel

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Miss Rachel DAI
Assistant Legal Adviser 2

Mr Ken WOO
Senior Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I. Election of Chairman

Mr Andrew LEUNG, the member with the highest precedence in the Council among all members of the Bills Committee present, presided over the election of Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr NG Leung-sing nominated Mr Christopher CHEUNG and the nomination was seconded by Mr Steven HO. Mr Christopher CHEUNG accepted the nomination. There being no other nomination, Mr Christopher CHEUNG was elected Chairman of the Bills Committee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

- (LC Paper No. CB(3)136/15-16 — The Bill
- File Ref: B9/2/2C — Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. LS14/15-16 — Legal Service Division Report
- LC Paper No. CB(1)296/15-16(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(1)296/15-16(02) — Paper on Deposit Protection Scheme (Amendment) Bill 2015 prepared by the Legislative Council Secretariat (background brief)
- LC Paper No. CB(1)320/15-16(01) — Letter from Assistant Legal Adviser to the Administration dated 15 December 2015)

4. The Bills Committee deliberated (Index of proceedings attached at the **Appendix**).
5. Mr NG Leung-sing declared that he was a Member returned from the functional constituency of Finance.

Follow-up actions required of the Administration

6. The Administration was requested to take the following actions –
- (a) provide the views expressed by licensed banks, being members of Deposit Protection Scheme ("DPS"), during the Administration's consultation with them on the proposed gross payout approach considering that their interests were better protected under the present net payout approach of DPS than the proposed gross payout approach and that the premium to be paid by the banks would likely increase in some cases;

- (b) provide information on how the winding-up procedures and the rights of the debtors would be affected as a result of the adoption of the proposed gross payout approach of DPS, and the policy and guidelines to be put in place for regulating liquidators' handling of debts owed to a failed bank;
- (c) provide a list of possible scenarios that depositors, particularly those also having debts owed to the bank (e.g. mortgagors), would face as a consequence of the enactment of the proposed legislative amendments, with recommendations on the ways in which depositors/mortgagors could deal with them; and
- (d) clarify the drafting consideration of the expression of "despite any rule of law" in the proposed section 38(1)(a) in relation to the subrogation rights of the Hong Kong Deposit Protection Board.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)403/15-16(02) on 7 January 2016.)

Invitation of views

7. The Bills Committee agreed to invite written views on the Deposit Protection Scheme (Amendment) Bill 2015 ("the Bill") from interested parties and members of the public.

(Post-meeting note: Members were informed of the arrangements of inviting views from interested parties and the public vide LC Paper No. CB(1)321/15-16 on 17 December 2015.)

8. Members agreed that the follow-up paper to be provided by the Administration as well as any submissions received would be circulated to members for their consideration of whether a further meeting was necessary.

9. Members examined the Bill clause by clause. The Chairman concluded that the Bills Committee had completed the clause-by-clause examination of the Bill. Further meeting would be held if members considered it necessary.

Legislative timetable

10. Members noted that the Administration would advise the Bills Committee on the proposed date for resumption of the Second Reading debate on the Bill in due course, and the Chairman would submit a report on the deliberations to the House Committee accordingly.

(*Post-meeting note:* Members were informed vide LC Paper No. CB(1)403/15-16 issued on 7 January 2016 that the Administration had proposed to resume the Second Reading debate on the Bill at the Council meeting of 3 February 2016.)

III. Any other business

11. There being no other business, the meeting ended at 10:24 am.

Council Business Division 1
Legislative Council Secretariat
3 February 2016

**Proceedings of first meeting of the
Bills Committee on Deposit Protection Scheme (Amendment) Bill 2015
on Wednesday, 16 December 2015, at 9:00 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I - Election of Chairman			
000106 – 000313	Mr Andrew LEUNG Mr NG Leung-sing Mr Steven HO Mr Christopher CHEUNG	Election of Chairman Mr Christopher CHEUNG was elected Chairman of the Bills Committee.	
Agenda item II - Meeting with the Administration			
000314 – 001608	Chairman Administration	PowerPoint presentation on the Deposit Protection Scheme (Amendment) Bill 2015 ("the Bill") by the Administration (LC Paper No. CB(1)319/15-16(01)).	
001609 – 002810	Chairman Mr NG Leung-sing Administration	<p>Mr NG Leung-sing declared interest. He considered that the proposed legislative amendments were acceptable to him for they were conducive to banking stability and greater protection for depositors with a reasonable protection limit at \$500,000 per person per licensed bank.</p> <p>Mr NG sought information on –</p> <p>(a) the views expressed by licensed banks, being members of Deposit Protection Scheme ("DPS"), during the Administration's consultation with them on the proposed gross payout approach considering that their interests were better protected under the present net payout approach of DPS than the proposed gross payout approach and that the premium to be paid by the banks would likely increase in some cases; and</p> <p>(b) under the gross payout approach, the increase in the contributions to be made by licensed banks to the Deposit Protection Scheme Fund ("DPS Fund").</p>	The Administration to follow up as per paragraph 6(a) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) with the proposed gross payout approach, depositors would have quicker access to compensation payment in relation to the protected deposits and be assured of deposit compensation. This could reduce any contagion effect resulting from any banking crises; (b) the proposed gross payout approach would not extinguish depositors' liabilities owed to a failed bank. Any amount of deposit in excess of DPS protection limit would continue to be subject to set off against the depositors' liabilities owed to the bank under the relevant law. The depositors were still obliged to settle any outstanding debt owed to the bank or its liquidator after receiving the deposit compensation from the Hong Kong Deposit Protection Board ("HKDPB"); and (c) 17 submissions, which indicated broad support for the proposed legislative amendments, were received during the public consultation. The consultation conclusions were published in May 2015. While contributions to be paid by some banks to the DPS Fund might increase under the gross payout approach with an average rate of increase up to 10% for larger banks, individual banks were expected to benefit from lower IT maintenance and compliance costs because of the streamlined data maintenance requirements. 	
002811 – 003626	Chairman Mr Steven HO Administration	<p>Mr Steven HO made the following enquiries –</p> <ul style="list-style-type: none"> (a) how the winding-up procedures and the rights of the debtors would be affected as a result of the adoption of the proposed gross payout approach. That particularly concerned those depositors with rather limited cash, notably young flat owners, who might need to secure loans from other financial institutions for the repayment hence facing the additional interest burden incurred; and 	The Administration to follow up as per paragraph 6(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>(b) whether deposits by non-Hong Kong Permanent Residents ("HKPRs") were protected under DPS.</p> <p>The Administration responded that –</p> <p>(a) the winding-up procedures would fall under the insolvency regime and outside the purview of the present review of DPS;</p> <p>(b) generally depositors having mortgage loans with the bank were expected to continue their repayments according to the mortgage agreements. It was also possible for liquidators to sell those loans as a package; and</p> <p>(c) deposits maintained in all licensed banks that were DPS members in Hong Kong were protected by DPS, irrespective of whether the depositors were HKPRs or not.</p>	
003627 – 004306	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai made the following enquiries –</p> <p>(a) the scope of "protected deposits" under DPS, and whether the Administration had considered reviewing the current compensation limit of \$500,000 in conjunction with the proposed legislative amendments; and</p> <p>(b) the target size of the DPS Fund.</p> <p>The Administration responded that –</p> <p>(a) DPS had not been triggered since its launch in 2006. The protection limit of DPS was originally \$100,000 and was raised to \$500,000 with effect from 1 January 2011 with the enactment of the Deposit Protection Scheme (Amendment) Ordinance 2010. As DPS currently provided full coverage for around 90% of depositors in Hong Kong, the protection limit was considered suitable and was not within the scope of the present review;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) in general, most types of deposits, including deposits denominated in Renminbi or foreign currencies, were covered by DPS as "protected deposits". Structured deposits, offshore deposits, bearer form deposits, and time deposits with an original term to maturity longer than five years, were not covered. DPS members were required to notify customers if a financial product had been described as a deposit but was not protected by DPS; and</p> <p>(c) the levy payable by DPS members currently totaled at 0.16% of the total deposits while the target was 0.25%. HKDPB secured under a standby liquidity facility of \$120 billion from the Exchange Fund to meet any liquidity requirements arising from any need to pay compensation to depositors.</p>	
004307 – 004835	Chairman Mr Andrew LEUNG Administration	<p>Mr Andrew LEUNG expressed support for the Bill. He however urged the Administration to put in place policy and guidelines for regulating liquidators' handling of debts owed to a failed bank as the liquidation of the bank would have a profound impact on its debtors, in particular young flat owners and small and medium enterprises, which might encounter difficulties and incur high interest payment securing loans from other financial institutions for the repayment.</p> <p>The Administration responded that under the gross payout approach, depositors would be compensated an amount up to the protection limit without having to set off against the depositors' assets their liabilities owed to the same bank at the time of payout determination. This would enable depositors to meet their immediate financing needs.</p>	The Administration to follow up as per paragraph 6(b) of the minutes.
004836 – 005553	Chairman Mr Steven HO Mr NG Leung-sing Administration	Mr Steven HO requested the Administration to provide a list of possible scenarios that depositors, particularly those also having debts owed to the bank (e.g. mortgagors), would face as a consequence of the enactment of the proposed legislative amendments, with recommendations on the ways in which depositors/mortgagors could deal with them.	The Administration to follow up as per paragraph 6(c) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>Mr NG Leung-sing echoed Mr HO's views. He invited the Administration to strengthen publicity efforts to help the public understand and tackle the various situations resulted from the implementation of the proposed legislative amendments.</p> <p>The Administration agreed to provide the information requested by Mr HO, and would work with HKDPB to step up publicity efforts upon passage of the Bill.</p>	
005554 – 005818	Chairman Mr Steven HO Mr NG Leung-sing Administration	Members agreed to invite written views from the public, and further meeting would be held if necessary.	
<p><i>Clause-by-clause examination of the Bill</i></p> <ul style="list-style-type: none"> – The Bill (LC Paper No. CB(3)136/15-16) – Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)296/15-16(01)) – Letter dated 15 December 2015 from the Assistant Legal Adviser to the Administration (LC Paper No. CB(1)320/15-16(01)) 			
005819 – 010155	Chairman Administration	<p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – to amend Deposit Protection Scheme Ordinance</u></p> <p><u>Clause 3 – to substitute section 25</u></p> <p><u>Clause 4 – to amend section 27 (entitlement to compensation: general)</u></p> <p>Members raised no question.</p>	
010156 – 010959	Chairman Administration Assistant Legal Adviser 2 ("ALA2")	<p><u>Clause 5 – to amend section 32 (Board's duties and powers on occurrence of specified event)</u></p> <p><i>Section 32(8)</i></p> <p>ALA2 sought clarifications on the following –</p> <p>(a) the meaning of "similar form" in respect of the proposed definition of "in hard copy form" added to the section; and</p> <p>(b) the meaning of "other medium" in part (b) of the proposed definition of "in electronic form" added to the section.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that the above definitions were in line with those provided in section 372 of the Companies Ordinance (Cap. 622) and section 2 of the Electronic Transactions Ordinance (Cap. 553) respectively. Considering the possibility of new modes of communication to be emerged in future amid technological advancements, the two relevant definitions were intended to contain "catch-all" expressions to cater for future changes.</p> <p>ALA2 asked, in relation to the Chinese rendition of the proposed definition of "in electronic form" added to the section, whether consideration would be given to amending "能在資訊系統內傳送" in part (a) to "能在一個資訊系統內傳送" to better reflect the transmission of electronic record within one information system.</p> <p>The Administration responded that the drafting of the proposed definition of "in electronic form", as it currently stood, was sufficient to convey the policy objective of the Bill. It was in line with the one provided in section 2 of Cap. 553. "能在資訊系統內傳送" was sufficient to reflect that the transmission was within one information system.</p>	
011000 – 011017	Chairman Administration	<p><u>Clause 6 – to amend section 35 (maximum amount of compensation payable to a depositor)</u></p> <p><u>Clause 7 – to amend section 37 (recovery of payment by Board)</u></p> <p>Members raised no question.</p>	
011018 – 012017	Chairman Administration Mr Alan LEONG	<p><u>Clause 8 – to amend section 38 (subrogation)</u></p> <p>Mr Alan LEONG requested the Administration to consider reviewing the expression of "despite any rule of law" in the proposed section 38(1)(a) as it might appear to override all other laws in Hong Kong. He was content with the present and future arrangement for HKDPB's subrogation rights to prevail over any otherwise arrangements in law. He was concerned whether the drafting of the expression "despite any rule of law" was appropriate in that context.</p>	The Administration to follow up as per paragraph 6(d) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		The Administration undertook to study Mr LEONG's request.	
012018 – 012311	Chairman Administration	<u>Clause 9 – to amend section 48 (power of Board to obtain information)</u> <u>Clause 10 – to add section 57</u> <u>Clause 11 – to amend schedule 4 (contributions to Fund)</u> Members raised no question.	
012312 – 012430	Chairman Administration	The Bills Committee completed the clause-by-clause examination of the Bill. Closing remarks	

Council Business Division 1
Legislative Council Secretariat
3 February 2016