

**立法會**  
**Legislative Council**

LC Paper No. LS14/15-16

**Paper for the House Committee Meeting  
on 27 November 2015**

**Legal Service Division Report on  
Deposit Protection Scheme (Amendment) Bill 2015**

**I. SUMMARY**

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| <b>1. The Bill</b>                      | <p>The Bill amends the Deposit Protection Scheme Ordinance (Cap. 581) to -</p> <ul style="list-style-type: none"><li>(a) adopt a gross payout approach to determine the amount of compensation payable to a depositor and to recover the amount of compensation paid;</li><li>(b) revise the definition of "quantification date" for the purposes of calculating the compensation amount;</li><li>(c) enable the Hong Kong Deposit Protection Board to notify affected depositors by electronic means; and</li><li>(d) provide for transitional arrangements and consequential amendments.</li></ul> |
| <b>2. Public Consultation</b>           | <p>Public consultation on the proposals has been conducted and a paper on the consultation conclusions was published in May 2015.</p>  |
| <b>3. Consultation with LegCo Panel</b> | <p>The Panel on Financial Affairs was consulted on 4 May 2015. Panel members had raised questions on various aspects of the operation of the proposals.</p>  |
| <b>4. Conclusion</b>                    | <p>In view of Members' questions raised at the above Panel meeting, Members may wish to set up a Bills Committee to study the Bill in detail.</p>  |

## **II. REPORT**

The date of First Reading of the Bill is 25 November 2015. Members may refer to the LegCo Brief (File Ref.: B9/2/2C) issued by the Financial Services and the Treasury Bureau on 11 November 2015 for further details.

### **Object of the Bill**

2. The Bill amends the Deposit Protection Scheme Ordinance (Cap. 581) to -

- (a) adopt a gross payout approach to determine the amount of compensation payable to a depositor and to recover the amount of compensation paid;
- (b) revise the definition of "quantification date" for the purposes of calculating the compensation amount;
- (c) enable the Hong Kong Deposit Protection Board (the Board) to notify affected depositors by electronic means; and
- (d) provide for transitional arrangements and consequential amendments.

### **Background**

3. The Deposit Protection Scheme (the Scheme) was established in 2006 by the Board under Cap. 581 for the purpose of providing compensation to depositors under certain circumstances in respect of deposits maintained with banks that are members of the Scheme (Scheme members). All licensed banks, unless exempt by the Board, are Scheme members. Scheme members are required to pay contributions to the Deposit Protection Scheme Fund (the Fund) established under Cap. 581 from which compensation is to be paid. At present, the maximum amount of compensation payable to a depositor in respect of each Scheme member is HK\$500,000 regardless of the number or amount of deposits.

### **Provisions of the Bill**

#### Adopting a gross payout approach

4. In relation to the determination of the amount of compensation to which a depositor is entitled from the Fund, the existing approach is that the

failed Scheme member has a right of setting off the depositor's liabilities against his/her protected deposits (a net payout approach). The Bill proposes to replace the existing net payout approach with a new payout approach under which the depositor's liabilities to the failed Scheme member would not be taken into account (a gross payout approach) (clause 4).

5. In relation to the determination of the reimbursement of compensation paid by the Board, the Bill also proposes to replace the existing net payout approach with a gross payout approach. Under the new approach as set out in the proposed section 38(1A), (1B) and (1C) of Cap. 581, the Board would be entitled to recover any net amount of compensation payment made to the depositor and any interest accrued on that amount, and for that purpose, any law relating to, and any right or obligation with regard to, set off would not apply (clause 8).

#### Revising the definition of "quantification date"

6. In relation to the determination of the reference date, i.e. the "quantification date", used for calculating the compensation amount, section 25 of Cap. 581 provides that "quantification date", in relation to a Scheme member, means the date of a specified event<sup>1</sup> set out in section 22(1)(a) of Cap. 581 under specified circumstances, or the date of appointment of a provisional liquidator in respect of the Scheme member.

7. The Bill proposes to revise the definition of "quantification date" to align it with the date of the specified event (clause 3). According to paragraph 8 of the LegCo Brief, this proposal would remove any unnecessary uncertainty in connection with the determination of the amount of compensation during a payout process which may be complicated by the administrative and legal procedures in relation to the appointment of a provisional liquidator in respect of the failed bank.

#### Board to notify affected depositors by electronic means

8. Under section 32 of Cap. 581, when a specified event has occurred in relation to a Scheme member, the Board is required to notify the relevant depositors of their compensation entitlement and the relevant details as soon as practicable. Under section 32(7) of Cap. 581, the notification to the depositor has to be made in writing.

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<sup>1</sup> Under section 22(1)(a) of Cap. 581, a "specified event" has occurred in relation to a Scheme member if a winding-up order has been made by the Court of First Instance in respect of the Scheme member; or the Monetary Authority has served on the Board a notice of his decision that compensation should be paid from the Fund to the depositors of the Scheme member in accordance with Cap. 581, whichever is the earlier.

9. The Bill proposes to amend section 32(7) of Cap. 581 to enable the Board to comply with the notification requirement by issuing the notice to the depositor in hard copy form or in electronic form (clause 5).

#### Other amendments

10. The Bill also introduces other amendments to Cap. 581 which are incidental to the adoption of a gross payout approach to the determination of the amount of compensation payable to a depositor and the recovery of the compensation paid by the Board.

#### Transitional arrangements

11. Clause 10 of the Bill adds a new section 57 to Cap. 581 to provide for transitional matters, which are summarized below -

- (a) the existing provisions in Cap. 581 would apply to all matters arising from, in relation to, or as a consequence of, a specified event that has occurred before the commencement date of the enacted Ordinance after the Bill is passed by the Legislative Council; and
- (b) the existing provisions in relation to the amount of relevant deposits or relevant liabilities under section 48(2), section 1(1) and section 1(2) of Schedule 4 to Cap. 581 would continue to apply for determining the amount of build-up levy payable by a Scheme member for the year of 2016 and for calculating the amount of contribution payable by a new Scheme member for the year of 2016.

#### **Commencement**

12. The Bill contains no commencement provision. By virtue of section 20(2)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill, if passed, would come into operation on the day the enacted Ordinance is published in the Gazette.

#### **Public Consultation**

13. According to paragraph 17 of the LegCo Brief, the Administration conducted public consultation on the legislative proposals from September to December 2014 and received general support for the proposals. A paper on the consultation conclusions was published in May 2015.

## **Consultation with LegCo Panel**

14. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed on the legislative proposals at the meeting on 4 May 2015. While members generally supported the legislative proposals, some raised questions on various issues, including the level and coverage of the Scheme, impact of the proposed gross payout approach on the insolvency of a bank, operation of the proposals relating to determination of the "quantification date" and issuance of electronic notices.

## **Conclusion**

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the Members' questions raised at the above Panel meeting, Members may wish to form a Bills Committee to study the Bill in detail.

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