

NOTICES

G.N. 818

HONG KONG DEPOSIT PROTECTION BOARD

APPLICATION FOR EXEMPTION AS A MEMBER OF DEPOSIT PROTECTION SCHEME

Background

The Deposit Protection Scheme Ordinance (the 'Ordinance') was enacted in May 2004. The main objective of the Ordinance is to provide for the establishment of a deposit protection scheme in Hong Kong (the 'Scheme') 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').

2. Under section 12 of the Ordinance, all banks in Hong Kong are members of the Scheme unless otherwise exempted by the Hong Kong Deposit Protection Board (the 'Board') in accordance with section 13 of the Ordinance. This guideline, issued under section 8 of the Ordinance, provides guidance to banks which wish to seek exemption from participation in the Scheme.

Criteria for exemption

3. Section 13(4) of the Ordinance provides that the Board shall not exempt a bank from participation in the Scheme unless it is satisfied that:—

- (i) the bank is incorporated outside Hong Kong;
- (ii) the deposits taken by the bank at its Hong Kong offices are protected by a deposit protection scheme, or other scheme of a similar nature, established and maintained in the jurisdiction in which the bank is incorporated (the 'overseas scheme'); and
- (iii) the scope and level of protection available to those deposits under the overseas scheme are not in all material respects narrower, and lower, than those that would be available to those deposits under the Scheme if the bank were not exempted.

4. The first criterion for exemption is obvious—only banks incorporated outside Hong Kong (as opposed to banks incorporated in Hong Kong) are eligible to apply for exemption.

5. The second and the third criteria effectively require that the deposits taken by the Hong Kong offices of an overseas incorporated bank seeking exemption must already be covered by an overseas scheme which is seeking exemption must already be covered by an overseas scheme which is established and maintained in the bank's home jurisdiction and which provides protection similar to, if not more generous than, the Scheme.

6. In assessing whether the scope of protection of the overseas scheme is not narrower than that of the Scheme, the Board will take into account, inter alia, the following features of the overseas scheme:—

- (i) the types of deposits protected by the overseas scheme (e.g. current account deposits, savings deposits and time deposits);
- (ii) the types of depositors covered by the overseas scheme (e.g. personal depositors and corporate depositors);
- (iii) the treatment of accrued interest;
- (iv) the treatment of deposits denominated in foreign currencies;
- (v) the treatment of multi-beneficiary accounts (e.g. joint, trust and client accounts); and
- (vi) the treatment of depositors' liabilities for the purposes of calculating the amount of protection (i.e. the extent of set-off).

7. In assessing whether the level of protection of the overseas scheme is not lower than that under the Scheme, the Board will have regard to, inter alia, the protection limit of the overseas scheme as well as any co-insurance requirement on depositors (i.e. depositors are protected up to a certain percentage of their deposits).

8. It is important to note that, for a bank to be exempted, it is only necessary for the scope and level of protection of the overseas scheme to be, 'in all material respects' (as opposed to 'in all respects'), equivalent to or more generous than those of the Scheme.

Conditions of exemption

9. An exemption granted to a bank is subject to the conditions specified in section 13(5) of the Ordinance.

10. Firstly, the bank shall pay an annual exemption fee of such amount as may be specified by the Board from time to time. At the moment, the annual exemption fee is fixed at HK\$30,000.

11. Secondly, the bank shall forthwith notify the Board of any change of circumstances which may affect the exemption and, if so required by the Board, supply further information and documents to assist the Board in deciding whether the exemption should continue to be granted.

12. Thirdly, if the bank is exempted from participation after having been a member of the Scheme, it shall, in relation to any deposit taken by it before the date on which the exemption takes effect:—

- (i) at the written request of the depositor made within 3 months after the date of exemption; and
- (ii) without imposing any fee or penalty on the depositor,

repay the deposit, and pay the interest accrued thereon, prior to maturity.

13. Apart from these standard conditions, the Board may impose further conditions of the exemption if it considers appropriate to do so.

14. The conditions of exemption should be observed at all times by the exempted bank. Non-compliance with the conditions may result in revocation of the exemption by the Board.

15. The Board will review a bank's exemption status from time to time. In case of need, it may vary the existing conditions of exemption or attach further conditions to the exemption.

Disclosure by exempted banks

16. In accordance with section 13(10) of the Ordinance, an exempted bank shall, as soon as practicable after it has received the notice of decision of the Board, inform in writing its depositors:—

- (i) that it is not a member of the Scheme;
- (ii) that any deposit, in whole or in part, taken by the bank at any of its Hong Kong offices is not protected by the Scheme, but is protected by the relevant overseas scheme; and
- (iii) of the following information about the overseas scheme:—
 - (a) the name, address, telephone number and website (if any) of the organization operating the overseas scheme;
 - (b) the scope and level of protection available to the deposits under the overseas scheme;
 - (c) the type of deposits protected by the overseas scheme; and
 - (d) any other information about the overseas scheme as specified by the Board in the conditions of exemption.

17. The exempted bank should also provide the same information to any person who is not already a depositor of the bank but has informed the bank that he intends to make a deposit with the bank. Such information should be provided as soon as practicable after the person has made known his intention to the bank.

18. If an exempted bank fails to comply with the above disclosure requirements, every director and every chief executive of the bank commits an offence and is liable to the penalty specified in section 13(11) of the Ordinance.

Application procedures

19. An application for exemption under section 13 of the Ordinance should be in writing and should be accompanied by the information set out in the Annex. It should be submitted to the Board at the following address:—

Hong Kong Deposit Protection Board
55th Floor, Two International Finance Centre
8 Finance Street, Central, Hong Kong

20. The Board will consider any application for exemption as soon as practicable. Once a decision is made, the Board will notify the bank of its decision in writing. In the case of a decision to refuse

to exempt the bank or to impose any condition of the exemption other than those mentioned in paragraphs 10–12 above, the Board will provide the reasons for its decision. Before making such decisions, the Board will also give the bank concerned an opportunity of being heard. An applicant aggrieved by the Board's decision may apply to the Deposit Protection Appeals Tribunal for a review of the decision.

25 February 2005

Hong Kong Deposit Protection Board

Annex

INFORMATION TO BE SUBMITTED ON APPLICATION FOR EXEMPTION

An application letter should be addressed to the Board describing how the exemption criteria are met. The letter should normally be signed by the chief executive of the applicant. In addition to the letter, the applicant should attach to it the following information and documents:—

- (1) Name, address, telephone number, fax number, and website (if any) of the organization operating the overseas scheme;
- (2) Annual reports of the overseas scheme for the last three years immediately prior to the application (if such reports are not written in Chinese or English, translation in either language should be provided);
- (3) Relevant laws and regulations governing the operation of the overseas scheme (if such laws and regulations are not written in Chinese or English, translation in either language should be provided); and
- (4) Written confirmation from a lawyer qualified to practise in the jurisdiction of the overseas scheme in respect of the following key design features of the overseas scheme:—

Membership

- (i) Types of institutions covered by the overseas scheme
- (ii) Circumstances under which an institution's membership will be terminated

Level of protection

- (iii) The protection limit
- (iv) Co-insurance requirement on depositors (if any)

Coverage, exclusion and netting

- (v) Types of deposits protected by the overseas scheme and types of deposits not protected
- (vi) Types of depositors protected by the overseas scheme and types of depositors excluded from protection
- (vii) Treatment of deposits denominated in foreign currencies
- (viii) Treatment of multi-beneficiary accounts, e.g., joint, partnership, trust (active and bare) and client accounts
- (ix) Treatment of accrued interest
- (x) Treatment of depositors' liabilities for the purposes of calculating the amount of protection (i.e. the extent of set-off)

Trigger conditions

- (xi) The conditions under which compensation will be paid to depositors

Funding and liquidity

- (xii) Source of funding (including whether an ex-ante fund is in place and, if yes, the current and target size of the fund)
- (xiii) Method for assessing the amount of contribution or premium payable by individual members
- (xiv) Source of liquidity for paying compensation to depositors in the event of a bank failure

Procedures for payout

- (xv) Any time limit on payment of compensation to depositors