

L.N. 108 of 2006**DEPOSIT PROTECTION SCHEME (REPRESENTATION
ON SCHEME MEMBERSHIP AND PROTECTION
OF FINANCIAL PRODUCTS UNDER
SCHEME) RULES**

(Made by the Hong Kong Deposit Protection Board under section 51(1)(d) and (2) 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 shall come into operation on the day appointed for the commencement of Part 5 of the Deposit Protection Scheme Ordinance (Cap. 581).

2. Interpretation

In these Rules, unless the context otherwise requires—

“automated teller machine” (自動櫃員機) means a terminal device, whether installed by a Scheme member or by some other person, which is linked directly or indirectly to a computer system used by a Scheme member and which provides facilities to customers of the Scheme member;

“banking business” (銀行業務) has the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155);

“bearer certificate” (不記名證書), in relation to a bearer instrument, means a certificate or other document of title, by which its holder is entitled to the repayment of the loan by its issuer;

“Membership Sign” (成員標誌) means the sign set out in the Schedule;

“relevant place of business” (有關營業地點), in relation to a Scheme member, means any place of business of the Scheme member in Hong Kong, other than any automated teller machine, at which it carries on banking business and to which members of the public ordinarily have physical access for the purposes of that business.

3. Display of Membership Sign

(1) Where a Scheme member carries on banking business in Hong Kong, it shall make known to the public that it is a member of the Scheme by displaying, at each of its relevant places of business, a Membership Sign in the size and colours specified in the Schedule—

- (a) in such a manner that the Membership Sign 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 Scheme member, but not any other person, is a member of the Scheme.
- (2) Where—
- (a) a Scheme member carries on banking business, or advertises its banking business, on a website through the Internet;
 - (b) another person carries on business, or advertises the business that he carries on, on the website through the Internet; and
 - (c) the website contains any information to the effect that—
 - (i) the Scheme member is a member of the Scheme; or
 - (ii) a deposit to be maintained with the Scheme member, or any other financial product offered by the Scheme member, is a protected deposit,

the Scheme member shall, subject to subsection (3), make known to the public that it is a member of the Scheme by displaying a Membership Sign in the colours specified in the Schedule on the website in such a manner that any person accessing the website should reasonably be aware that the Scheme member, but not any other person, is a member of the Scheme.

(3) A Membership Sign displayed for the purposes of subsection (2) is not required to be in the size specified in the Schedule.

4. Membership representations in advertisements

- (1) This section applies where—
- (a) a Scheme member publishes, or authorizes to be published, for its banking business any advertisement or promotional material, whether published by electronic, telecommunications or other means; and
 - (b) the advertisement or promotional material contains any information to the effect that—
 - (i) the Scheme member is a member of the Scheme; or
 - (ii) a deposit to be maintained with the Scheme member, or any other financial product offered by the Scheme member, is a protected deposit.
- (2) The Scheme member shall make known to the public that it is a member of the Scheme by including in the advertisement or promotional material mentioned in subsection (1) a statement to the effect that—
- (a) it is a member of the Scheme; and

(b) eligible deposits taken by it are protected by the Scheme up to a limit of HK\$100,000 per depositor.

(3) Where the advertisement or promotional material mentioned in subsection (1) contains any information relating to a financial product offered by the Scheme member that is not a protected deposit, the Scheme member shall include in the advertisement or promotional material a statement that the financial product is not a protected deposit and is not protected by the Scheme.

5. Disclosure as to financial products offered before commencement of these Rules

(1) This section applies where—

- (a) a financial product offered by a Scheme member before the commencement of these Rules is not a protected deposit but was described as a deposit in any advertisement, promotional material or document, whether published by electronic, telecommunications or other means; and
- (b) the financial product was held by a person immediately before that commencement.

(2) The Scheme member shall, within 60 days after the commencement of these Rules, notify the person mentioned in subsection (1)(b) in writing that the financial product is not a protected deposit and is not protected by the Scheme.

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

6. Disclosure as to financial products offered on or after commencement of these Rules

(1) This section applies where a financial product offered by a Scheme member on or after the commencement of these Rules is not a protected deposit but was 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 shall 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 subsection (4), where the financial product is not a bearer instrument, the Scheme member shall, before a person opens an account with the Scheme member for the purpose of the financial product or 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, notify the person in accordance with subsection (5) that the financial product is not a protected deposit and is not protected by the Scheme; or
- (b) if the financial product is offered to the person by any other means, notify the person in accordance with subsection (6) that the financial product is not a protected deposit and is not protected by the Scheme.

(4) The Scheme member is not required under subsection (3) to notify a person in respect of the financial product before the person invests in the financial product—

- (a) if—
 - (i) the person maintains an account with the Scheme member for the purpose of the financial product;
 - (ii) the Scheme member has, before the person opens the account, notified the person in respect of the financial product under that subsection; and
 - (iii) the financial product is to be invested under that account;or
- (b) if—
 - (i) the person has maintained an account with the Scheme member for the purpose of the financial product before the commencement of these Rules;
 - (ii) the Scheme member has notified the person in respect of the financial product under section 5(2); and
 - (iii) the financial product is to be invested under that account.

(5) The notice given under subsection (3)(a) is required to be accompanied by a request to the person to acknowledge, before he invests in the financial product, in writing or by the means in which the offer is made, that he has received and understands the notice.

(6) The notice given under subsection (3)(b) is required—

- (a) to be in writing; and
- (b) to be accompanied by a written request to the person to acknowledge, before he opens the account or invests in the financial product, in writing, that he has received and understands the notice.

(7) 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.

7. Disclosure when deposits are no longer protected by Scheme

(1) Where a protected deposit is maintained by a person with a Scheme member, the Scheme member shall, before effecting a relevant variation to the deposit, notify the person in accordance with subsection (2) that on the variation, the deposit is no longer a protected deposit and is no longer protected by the Scheme.

(2) The notice given under subsection (1) is required—

(a) to be in writing; and

(b) to be accompanied by a written request to the person to acknowledge, before the Scheme member effects the relevant variation, in writing, that he has received and understands the notice.

(3) For the purposes of this section, there is a relevant variation to a deposit maintained by a person with a Scheme member if—

(a) any term or condition under which the deposit is maintained is varied to the effect that the deposit is no longer a protected deposit; or

(b) any right or obligation of the person or Scheme member in relation to the deposit is varied, in connection with the provision by the Scheme member to the person of a service, or of a credit facility secured by the deposit, to the effect that the deposit is no longer a protected deposit.

8. Offences

If a Scheme member contravenes section 3(1) or (2), 4(2) or (3), 5(2), 6(2) or (3) or 7(1), the Scheme member commits an offence and is liable—

(a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

9. Defences

In any proceedings for an offence under these Rules, it is a defence for the person charged to prove that he took reasonable precautions and exercised due diligence to avoid the commission of the offence by himself or any person under his control.

SCHEDULE

[ss. 2 & 3]

MEMBERSHIP SIGN



Andrew CHAN Chi-fai
Chairman,
Hong Kong Deposit Protection Board

12 May 2006

Explanatory Note

The object of these Rules is to require a Scheme member—

- (a) to make known to the public that it is a member of the Deposit Protection Scheme—
 - (i) by displaying a Membership Sign at its relevant places of business at which it carries on banking business (section 3(1)); and
 - (ii) by displaying a Membership Sign on the website on which it carries on banking business or advertises its banking business under certain circumstances (section 3(2));
- (b) to make known to the public that it is a member of the Deposit Protection Scheme by including a membership representation statement in advertisements and promotional materials under certain circumstances (section 4);

- (c) to notify customers of certain financial products that the financial products are not protected by the Deposit Protection Scheme (sections 5 and 6);
- (d) to notify depositors of protected deposits, before the Scheme member varies certain term or condition of the deposits or varies certain right or obligation of the depositors or Scheme member, that on the variation, the deposits are no longer protected by the Deposit Protection Scheme (section 7).