

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

Questions and Answers

Background

Established under the Deposit Protection Scheme Ordinance, the Hong Kong Deposit Protection Board is charged with the responsibility for establishing and maintaining a deposit protection scheme (DPS) in Hong Kong. In accordance with section 51 of the DPS Ordinance, the Board issued the DPS (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules to govern the representations that should be made by members of the DPS (Scheme members) regarding their membership and the protection status of their financial products. This set of questions and answers serves to provide guidance on the operational issues that may arise from the compliance with this set of Rules.

Display of Membership Sign

Q1. A Scheme member should display a DPS membership sign at each of its “relevant place of business”. Should a DPS membership sign be displayed at a Scheme member’s place of business where no deposits are taken by the Scheme member (e.g. a loan centre or a back office without customer access)?

A1. The DPS membership sign needs only be displayed at the “relevant place of business” to which customers ordinarily have physical access for carrying out banking transactions (which include taking deposits from the public and paying or collecting cheques of customers).

Q2. Exactly where should a Scheme member display the DPS membership sign at its “relevant place of business”?

A2. There is no legal requirement as to where exactly the DPS membership sign should be displayed. However, a Scheme member must display the DPS membership sign in a manner that is clearly visible to customers entering its place of business. A Scheme member will be regarded as compliant with this requirement if it posts the DPS membership sign at each customer entrance to the relevant place of business.

Q3. Is displaying a DPS membership sign on the home page of a Scheme member’s website sufficient?

A3. A Scheme member is not obliged to display a DPS membership sign at its website. However, if a Scheme member chooses to display a DPS membership sign at its website which is shared with other entities (e.g. its group companies), the Scheme member should display the DPS membership sign 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. We will not however specify whether displaying a membership sign on the home page is sufficient or not since this will very much depend on the circumstances of each case.

Q4. Can a Scheme member display a DPS membership sign at its automatic teller machines (ATMs)?

A4. A Scheme member should not display a DPS membership sign at its ATMs as well as its premises which are solely used for housing ATMs. This is to avoid any possible confusion to customers as some Scheme members share their ATMs with non-bank financial institutions and some ATM operators are not Scheme members.

Q5. Will the Board provide any specifications on the DPS membership sign? Is there any requirement on Scheme members to print or reproduce the DPS membership sign on specified types of materials?

A5. The specifications on the DPS membership sign are provided in the **Annex**. There is no restriction on the types of materials to be used for printing or reproducing the DPS membership sign. Printing the membership sign on plastic labels and posting the labels on glasses or doors, or presenting the membership sign on acrylic stands, are considered acceptable by the Board.

Membership Representations In Advertisements

Q6. What does “financial product” in the Rules refer to?

A6. The term “financial product” refers generally to any products offered in the financial market, including banking, investment, capital and insurance products.

Q7. If a Scheme member refers to its DPS membership or the protection status of its deposit in its advertisement or promotional material, is there any recommended wording for inclusion in the advertisement or promotional material by the Scheme member to make known to the public that it is a member of the DPS?

A7. The suggested wording of the statement is as follows:

“[Name of the Scheme member] is a member of the Deposit Protection Scheme. Eligible deposits taken by this Bank are protected by the Scheme up to a limit of HK\$100,000 per depositor.”

Q8. An advertisement may cover both protected and non-protected financial products and there may not be sufficient space to cover the protection status of all the products in one single advertisement.

A8. Scheme members have the discretion to decide whether they want to refer to their membership or the protection status of its protected deposits in their advertisements. However, if a Scheme member chooses to refer to its membership or the protection status of its protected deposit in an advertisement relating to a non-protected deposit or financial product, the Scheme member should make it clear that the non-protected deposit or financial product is not protected by the DPS in order to avoid misleading its customers.

Disclosure for Financial Products Offered Before Commencement of Rules

Q9. How should the disclosure be made to the existing customers of a Scheme member which held non-protected financial products? Is a general notice to the customers requesting them to refer to details in the banking hall or website acceptable?

A9. A general notice to the customers of Scheme members requesting them to refer to a list of non-protected financial products in the banking hall or website cannot serve the purpose of bringing the customers' attention to the unprotected status of financial products that they are holding. Either a customized written notice to individual customers or a general written notice to all customers (whether they hold or do not hold non-protected financial products) are acceptable for the purpose of notifying the customers of their non-protected financial products. In addition, Scheme members are recommended to include a point of contact (e.g. in the form of telephone hotline number) in the notice so that customers may seek assistance from them if necessary.

Q10. Are Scheme members required to notify a customer who pledged his deposit for securing a banking facility before the commencement of the Rules?

A10. In general, section 5 of the Rules applies to a financial product that is not a protected deposit but was described as a deposit in any advertisement, promotional material or document. Hence, Scheme members are required to notify in writing an existing customer which held a pledged deposit before the commencement of the Rules that such amount of money is not a protected deposit and is not protected by the DPS.

Disclosure for Financial Products Offered on or after Commencement of Rules

Q11. For a negative disclosure made under the Rules, the Rules only require Scheme members to accompany a request to the customer to acknowledge that he has received and understands the notice. If a customer refuses to give an acknowledgement to a Scheme member's disclosure statement, what should the Scheme member do? Is proper record keeping of the customer's refusal to give an acknowledgment sufficient?

A11. If a customer refuses to give an acknowledgement that he has received and understands the negative disclosure on a non-protected financial product, the Scheme member is expected to refuse opening the account or completing the transaction with the depositor.

Q12. Does individual Scheme member have the discretion to decide how a customer acknowledgement is to be obtained, be it in written form, or electronic form (such as electronic acceptance in Internet), or through telephone?

A12. In general, the negative disclosure together with the acknowledgement should be made in writing. However, if the offer is made through telephone, the Internet or electronic mail, the negative disclosure and the acknowledgement may be made through the same means in which the offer is made.

Q13. For certain investment transactions, Scheme members will request clients to confirm a deal after execution. Can the disclosure be incorporated into the deal confirmation?

A13. The acknowledgement is required to be obtained before the customer opens an account with the Scheme member for the purpose of the financial product or invests in the financial product. Hence, it is not acceptable for a Scheme member to make the disclosure and obtain the acknowledgement in the deal confirmation which is issued after the investment transaction is completed.

Q14. Can the disclosure be incorporated into the terms and conditions of the relevant non-protected financial products?

A14. So far as the disclosure statement is brought to the attention of the customer and the customer's acknowledgement is obtained, the Scheme member has the discretion to determine in what document the disclosure statement is contained.

Q15. Is there any recommended wording for the acknowledgement from customers for reference by Scheme members?

A15. The suggested wording for an acknowledgement statement is as follows:

“I acknowledge that I have received and understand that the specified product(s) is not a protected deposit and is not protected by the Deposit Protection Scheme in Hong Kong.”

Q16. How long should Scheme members keep the records of customer acknowledgement?

A16. Scheme members should follow their own existing record keeping policies which should be consistent with all existing laws, regulations and guidelines.

Q17. Is the disclosure requirement applicable to safe “deposit” box?

A17. No, as safe deposit box is not a financial product.

Q18. Is the disclosure requirement applicable to credit balance in credit card accounts?

A18. Credit balance in credit card accounts does not constitute a deposit and therefore is not protected by the DPS. As such, Scheme members should avoid referring the credit balance in credit card accounts as a “deposit”. Otherwise a negative disclosure will be required.

Q19. How can a Scheme member determine whether a financial product is a structured deposit and is thus excluded from deposit protection?

A19. Whether a financial product falls within the meaning of “structured deposit” in Schedule 1 to the DPS Ordinance needs to be determined on a case by case basis having regard to the terms and conditions of the product. In case of doubt, Scheme members should seek advice from their legal counsel. Nevertheless, the following table is produced to facilitate Scheme members to understand the definition of structured deposit in Schedule 1 to the DPS Ordinance.

Name of Financial Product	Key Feature	Structured deposit
Currency-linked products	<ul style="list-style-type: none"> A loan of money of which the principal may be repaid in another currency to be converted, at an exchange rate specified at the time when the loan of money was made, from the currency in which that loan was made 	Yes (see section 2A(a)(i) of Schedule 1)
Equity-linked products	<ul style="list-style-type: none"> A loan of money of which the principal may be repaid in the form of shares or other securities 	Yes (see section 2A(a)(ii) of Schedule 1)
Range accruals	<ul style="list-style-type: none"> A loan of money of which the principal and/or the interest payable depends on whether a specified interest rate is above, below or outside a specified level (e.g. whether HIBOR is higher than 5%); or is within or outside a specified range (e.g. whether HIBOR moves within the range of 3% and 5%) 	Yes (see section 2A(c)(iii) and section 2A(d)(iii) of Schedule 1)
Inverse floaters	<ul style="list-style-type: none"> A loan of money of which the principal and/or the interest payable depends on the difference calculated by subtracting a fixed percentage from a specified interest rate (e.g. 7% minus HIBOR) 	Yes (see section 2A(c)(iv) and section 2A(d)(iv) of Schedule 1)
Deposits with gifts-in-kind	<ul style="list-style-type: none"> An ordinary deposit except that gifts-in-kind are given to the depositor 	No
Deposits with step-up (or step-down) interest rates	<ul style="list-style-type: none"> An ordinary deposit except that the interest rates which are fixed at the time the deposit is made increase (or decrease) over the term of the deposit (e.g. 3% in the first year; 4% in the second year and 5% in the third year) 	No

Disclosure when Deposits Are No Longer Protected by DPS

Q20. Under what situations will section 7 of the Rules trigger the requirement of a disclosure be made by a Scheme member?

A20. A Scheme member should make a negative disclosure to the customer and obtain his acknowledgement if there is (a) a variation to any term or condition under which the deposit is maintained; or (b) a variation to any right or obligation of the person or

Scheme member in relation to the deposit in connection with the provision of a credit facility secured by the deposit or of a service by the Scheme member to the person to the effect that the deposit is no longer a protected deposit. We observe that the most commonly applicable situations are those where the term of a deposit is extended to exceed 5 years or when a credit facility secured by a deposit is provided by the Scheme member to the customer.

Q21. If a HK\$10 million of money is charged as security for a credit facility of a smaller amount, will the entire loan of money fall outside the definition of deposit and thus become not protected by the DPS?

A21. If a loan of money is charged as security for a credit facility, the entire loan of money or the whole balance in the deposit account, unless otherwise specified in the security document, will fall outside the definition of deposit and will not be protected by the DPS. This will be the case regardless of the utilization level of the credit facility.

Q22. Is a “lien” considered as an extension of a credit facility by a Scheme member with a deposit as security?

A22. We are of the view that the placement of a lien over a deposit does not constitute a security over the deposit. Further, the imposition of a lien on a customer should not be construed as the customer’s placement of a sum with his bank “upon terms referable to (the bank’s) provision of services or property” because “lien” is not a property or service provided by the bank to its customer.

Q23. In addition to the depositor, is a negative disclosure required to be made to third parties such as borrowers relying on a charge over a third-party deposit?

A23. No. A negative disclosure is required to be made only to the person who maintains the pledged sum of money with the Scheme member.

Q24. Will this requirement be applicable to situations where a deposit becomes an excluded person under the DPS Ordinance?

A24. No.

Q25. Is there any recommended wording for the acknowledgement from customers for reference by Scheme members?

A25. The suggested wording for an acknowledgement statement is as follows:

“I acknowledge that I have received and understand that, upon the relevant variation, the specified product(s) is not a protected deposit and is not protected by the Deposit Protection Scheme in Hong Kong.”

Others

Q26. If a Scheme member distributes non-DPS protected financial products issued by third parties (e.g. its overseas affiliates), is it required to make negative disclosure regarding those products?

A26. A disclosure and acknowledgement is required only if the non-DPS protected financial product is described as a “deposit” in its advertisement, promotional material or document. If this is the case, Scheme members should also make a negative disclosure and seek acknowledgement from the customer for a financial product distributed by the Scheme member, regardless whether it is issued by the Scheme member or not. For instance, where a Scheme member distributes a non-DPS protected financial product issued by a third party and the financial product is described as a “deposit”, the Scheme member is required to make negative disclosure and seek acknowledgement from the customer. Another example is where a Scheme member (whether or not it is incorporated in Hong Kong) takes deposits for an overseas branch and describes it as an “offshore deposit”, the Scheme member is required to make negative disclosure and seek acknowledgement from the customer.

Q27. If a callable deposit has a term to maturity of 6 years but the bank has an option to terminate the deposit contract upon the expiry of the first 3 years, is such a deposit excluded from deposit protection? What if a deposit has a term to maturity of 3 years but the bank or the depositor has an option to extend the term for another 3 years (i.e. 6 years in total), is such a deposit also excluded from deposit protection?

A27. Section 1(a) of Schedule 1 to the DPS Ordinance specifies that a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 year is not a protected deposit. If the original term of the deposit is 6 years, it will not be protected by the DPS although there is an option for the bank to shorten the maturity. If a deposit is composed of two tenures, whether it is regarded as a term deposit with a tenure for more than 5 years (and thus excluded from DPS protection) very much depends on how the deposit contract is constructed. For example, if the deposit contract specifies that the term is 3 year but the customer has the option to renew the contract for another 3 years upon the expiry of the first tenure, it is likely to be protected by the DPS.

Hong Kong Deposit Protection Board
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