

LEGISLATIVE COUNCIL BRIEF

The Secretary for Financial Services and the Treasury submits the following note for Members' information:

<u>Title of the Note</u>	<u>Date of ExCo</u>	<u>Date of Gazette</u>
Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules	--	19 May 2006
Deposit Protection Scheme (Payment of Contributions, Late Payment Fees and Rebates) Rules	--	19 May 2006

19 May 2006

Financial Services and the Treasury Bureau

LEGISLATIVE COUNCIL BRIEF

Deposit Protection Scheme Ordinance (Chapter 581)

DEPOSIT PROTECTION SCHEME (REPRESENTATION ON SCHEME MEMBERSHIP AND PROTECTION OF FINANCIAL PRODUCTS UNDER SCHEME) RULES

DEPOSIT PROTECTION SCHEME (PAYMENT OF CONTRIBUTIONS, LATE PAYMENT FEES AND REBATES) RULES

INTRODUCTION

The Hong Kong Deposit Protection Board (HKDPB) has published in the Gazette the following rules governing the operation of the Deposit Protection Scheme (DPS) under section 51 of the DPS Ordinance:

- Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (hereinafter referred to as “Representation Rules”); and
- Deposit Protection Scheme (Payment of Contributions, Late Payment Fees and Rebates) Rules (hereinafter referred to as “Contribution Rules”)

(collectively “Rules”).

BACKGROUND

2. Established under the DPS Ordinance, the HKDPB is charged with the responsibility for establishing and maintaining a DPS in Hong Kong. Since its formation in July 2004, the HKDPB has been making the necessary preparations for the DPS to start providing deposit protection and collecting contributions from members of the DPS (“Scheme members”).

3. One of the preparatory tasks to be completed before the launch of

the DPS is the issuance of the Representation Rules and the Contribution Rules. Under section 51 of the DPS Ordinance, the HKDPB may, after consultation with the Financial Secretary and the Hong Kong Association of Banks (HKAB), make rules governing the operation of the DPS. These rules are to be issued in the form of subsidiary legislation and tabled before the Legislative Council for negative vetting.

JUSTIFICATIONS

4. The Representation Rules, at Annex A, govern the representations that should be made by Scheme members regarding their membership and the protection status of their financial products. They are made under section 51(1)(d) and (2) of the DPS Ordinance. The objective of the Representation Rules is to assist members of the public to distinguish between DPS protected and non-DPS protected financial products, so that they can make an informed decision in selecting financial products suitable for them. In formulating the requirements in the Representation Rules, the HKDPB has made reference to the practices of leading deposit insurers in Canada, the UK and the US. It has also taken into account the comment received from HKAB and the Consumer Council.

5. The Contribution Rules, at Annex B, prescribe the manner in which Scheme members should pay contributions or late payment fees to the HKDPB, as well as the manner in which the HKDPB should pay rebates of contribution to Scheme members. They are made under section 51(1)(c) of the DPS Ordinance. The amount of contribution payable by a Scheme member is determined with reference to its supervisory rating assigned by the MA. It is a piece of sensitive information, which should not be disclosed to any third party without the consent of the MA. In view of this, the HKDPB has appointed the MA as its collection and payment agent. This arrangement ensures that contributions and rebates of contribution are paid through the inter-bank settlement system instead of the books of a commercial bank.

THE RULES

Representation Rules

6. The main requirements contained in the Representation Rules are:-
- (i) A Scheme member is required to make known to the public that it is a member of the DPS by displaying a DPS

membership sign at its relevant places of business (section 3(1));

- (ii) Where a Scheme member shares its websites with another person, and the website contains information about the Scheme member's DPS membership or the protection status of its financial products, the Scheme member shall display the DPS membership sign on the website in such a manner that any person assessing the website should reasonably be aware that the Scheme member, but not any other person, is a member of the Scheme (section 3(2));
- (iii) If a Scheme member refers to its DPS membership or its protected deposits in an advertisement, the statement to the following effect should be included in the advertisement-

“(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.” (section 4);

- (iv) Where a financial product offered by a Scheme member is not protected by the DPS but is described as a deposit in any advertisement, promotional material or document, the Scheme member shall notify the customer that the product is not protected by the DPS and request the customer to acknowledge receipt of the notification (section 6); and
- (v) Where a protected deposit is no longer protected by the DPS because of a variation to the terms and conditions of the deposit or the provision to the customer of a credit facility secured on the deposit or the provision of a service, the Scheme member shall notify the customer that the product is not protected by the DPS and request the customer to acknowledge receipt of the notification (section 7).

Contribution Rules

7. The key provisions of the Contribution Rules are:-

- (i) A Scheme member shall pay contribution or any late payment fee through its account opened and maintained with the MA pursuant to a requirement imposed under section 3A(1) of the Exchange Fund Ordinance, or where the Scheme member does not maintain such an account, through a settlement account designated by the Scheme member (section 3(1));
- (ii) Any contribution payable by a Scheme member should be paid within 21 days after the date of the payment notice given by the HKDPB to the Scheme member (section 3(3)); and
- (iii) The HKDPB shall pay rebate to a Scheme member through the latter's settlement account maintained with the MA, or where the Scheme member does not maintain such an account, through a settlement account designated by the Scheme member (section 4).

LEGISLATIVE TIMETABLE

8. The Rules were published in the Gazette on 19 May 2006 and will be tabled at the Legislative Council on 24 May 2006 for negative vetting. The Rules will come into effect on the same day appointed for the commencement of Part 5 of the DPS Ordinance by the Secretary for Financial Services and the Treasury. Subject to the completion of the negative vetting process, it is intended that Part 5 of the DPS Ordinance should come into operation on 25 September 2006.

IMPLICATIONS OF THE RULES

9. The Rules are in conformity with the Basic Law, including the provisions concerning human rights. They have no civil service, productivity, environmental or sustainability implications. The Representation Rules will bring about economic benefits in terms of enabling the public to make more informed financial decisions. The costs involved in monitoring and enforcing the Rules will be absorbed by the HKDPB, which is funded by contributions collected from Scheme members. The Rules will not affect the current binding effect of the existing provisions of the Deposit Protection Scheme Ordinance.

PUBLIC CONSULTATION

10. In accordance with section 51 of the DPS Ordinance, the HKDPB has consulted the Financial Secretary and the HKAB on the Representation Rules and the Contribution Rules. Considering that the requirements in the Representation Rules may affect the interests of consumers, the HKDPB has also consulted the Consumer Council on the Representation Rules. All comments have been properly addressed.

11. The HKDPB briefed the Legco Panel on Financial Affairs on 6 March 2006 on the latest implementation progress of the DPS as well as the proposed requirements in the Rules. Members of the Panel are supportive of the proposed requirements.

PUBLICITY

12. The HKMA will issue a letter to all Scheme members informing them of the issuance of the Rules.

ENQUIRIES

13. Inquiries on this brief may be directed to Mr. Raymond Chan, Deputy Chief Executive Officer (Operations), Hong Kong Deposit Protection Board (telephone number: 2878 1846) and Mrs. Millie Ng, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) (telephone number: 2529 0121).

Financial Services and the Treasury Bureau

19 May 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



Chairman,
Hong Kong Deposit Protection Board

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).

DEPOSIT PROTECTION SCHEME (PAYMENT OF CONTRIBUTIONS, LATE PAYMENT FEES AND REBATES) RULES

(Made by the Hong Kong Deposit Protection Board under section 51(1) 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 –

“settlement account” (交收戶口) means an account opened and maintained by an authorized institution pursuant to a requirement imposed on the institution under section 3A(1) of the Exchange Fund Ordinance (Cap. 66).

3. Payment of contributions and late payment fees

(1) A Scheme member shall pay any contribution payable under section 15(3) or (4) of the Ordinance, or any late payment fee payable under section 15(4) of the Ordinance –

- (a) if the Scheme member maintains a settlement account with the Monetary Authority, by an entry that is made in the account to the credit of the Monetary Authority; or
- (b) if the Scheme member does not maintain a settlement account with the Monetary Authority, by an entry that is made in a settlement account maintained by another

authorized institution with the Monetary Authority to the credit of the Monetary Authority.

(2) Such entry is to include a notice to the effect that the entry is made for the purpose of paying the contribution or late payment fee to the Board.

(3) Subject to subsection (4), a Scheme member shall pay any contribution payable under section 15(3) of the Ordinance during the specified time on a day (other than a public holiday or Saturday) that falls within the period of 21 days after the date on which the relevant notice in relation to the contribution is given to the Scheme member.

(4) If the last day of the period under subsection (3) is not a working day, the period includes the first working day that follows.

(5) In this section –

“gale warning” (烈風警告) means a gale warning within the meaning of section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62);

“rainstorm warning” (暴雨警告) means a rainstorm warning within the meaning of section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62);

“relevant notice” (有關通知), in relation to any contribution, means a notice of the assessment of the amount of the contribution that is given under section 15(2) of the Ordinance;

“specified time” (指明時間), in relation to a day, means the time between 9 a.m. and 12:30 p.m. on the day, but does not include the time during which a gale warning, or a rainstorm warning, is in force;

“working day” (工作日) means any day other than –

- (a) a public holiday;
- (b) a Saturday; or

- (c) a day on which a gale warning, or a rainstorm warning, is in force at any time between 9 a.m. and 12:30 p.m.

4. Payment of rebates

(1) The Board shall pay any rebate payable by the Board to a Scheme member under section 8 of Schedule 4 to the Ordinance –

- (a) if the Scheme member maintains a settlement account with the Monetary Authority, by a credit entry that is made in the account; or
- (b) if the Scheme member does not maintain a settlement account, by a credit entry that is made in the settlement account designated by the Scheme member in accordance with subsection (2).

(2) For the purposes of subsection (1)(b), a Scheme member shall designate a settlement account by giving a notice in writing to the Board.

Chairman,
Hong Kong Deposit Protection Board

2006

Explanatory Note

These Rules prescribe the manner in which –

- (a) contributions and late payment fees payable by a bank that is a member of the Deposit Protection Scheme under section 15(3) and (4) of the Deposit Protection Scheme Ordinance (Cap. 581) (“the Ordinance”) are to be paid; and
- (b) rebates payable by the Hong Kong Deposit Protection Board under section 8 of Schedule 4 to the Ordinance are to be paid.

2. The Rules also prescribe the period within which the above contributions are to be paid under section 15(3) of the Ordinance.