

## **LEGISLATIVE COUNCIL BRIEF**

Deposit Protection Scheme Ordinance (Chapter 581)

### **DEPOSIT PROTECTION SCHEME (AMENDMENT) BILL 2024**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 23 April 2024, the Council ADVISED and the Chief Executive ORDERED that the Deposit Protection Scheme (Amendment) Bill 2024 (“the Bill”) at **Annex A** should be introduced into the Legislative Council (“LegCo”) to implement the enhancement measures to the Deposit Protection Scheme (“DPS”).

#### **JUSTIFICATIONS**

##### **DPS**

2. Deposit protection is a core part of a robust financial safety net, which enhances the resilience of an economy against financial crises and is crucial to maintaining financial stability. The Hong Kong Deposit Protection Board (“the Board”) conducts regular reviews of the DPS to ensure that it remains efficient and effective in serving its objective of protecting depositors and aligns with international best practice. Based on the findings of the latest review initiated in 2021, the Board considers that the overall design and key aspects of the DPS generally remain appropriate and in line with other major jurisdictions, and recommends the following enhancements -

- (a) raising the protection limit from \$500,000 to \$800,000 (paragraph 4 below);
- (b) broadening the circumstances under which the “build-up levy” can be charged again, with the “build-up levy” rates kept unchanged (paragraph 10 below);
- (c) in the event of a bank merger or acquisition, providing enhanced coverage to affected depositors for six months upon the bank merger

or acquisition (paragraph 13 below); and

- (d) requiring the display of the DPS membership sign on the electronic banking platforms of DPS members (“Scheme members”) and streamlining the negative disclosure requirement on non-protected deposits for private banking customers (“PB customers”) (paragraphs 16 and 20 below).

## **Protection Limit**

3. Currently, the DPS provides a protection of up to \$500,000 on a per depositor per bank basis. This protection level could fully cover around 91% of depositors when it was first implemented in 2011. With depositors’ increasing income/savings over time, the coverage ratio has declined to around 88%-89% in recent years, which is below the standard of 90% as recommended by the International Association of Deposit Insurers (“IADI”)<sup>1</sup>.

4. In view of the above, there is a need to raise the protection limit to enhance depositor protection and further strengthen public confidence in the banking system. Raising the protection limit would entail additional costs<sup>2</sup> and increase moral hazard risk<sup>3</sup>. Having considered the inflation rates over the years, the IADI’s recommendations, as well as the deposit protection offered by similar schemes in other jurisdictions, it is proposed that the protection limit should be raised from the current \$500,000 to \$800,000, which seeks to strike a balance between enhancing the protection to depositors and keeping the additional costs/moral hazard risk at manageable levels, hence promoting banking stability.

5. The proposed protection limit of \$800,000 will be able to catch up with the cumulative inflation from 2011 to mid-2023<sup>4</sup>, and represent a 21% increase

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<sup>1</sup> The IADI is the global standard-setting body for deposit insurance systems. According to the international guidance set by the IADI, the deposit protection limit should be able to fully cover at least 90% of depositors.

<sup>2</sup> The additional costs are mainly the levies payable by banks as Scheme members for building up and maintaining the DPS Fund to cover possible pay-outs from the DPS. An increased protection limit will increase the target DPS Fund size. Banks concerned will therefore have to pay higher levies as contributions to the DPS Fund.

<sup>3</sup> Moral hazard risk refers to the risk of inducing excessive risk-taking behaviour by banks and depositors due to the provision of deposit protection. Moral hazard generally increases with the level of protection limit. In an extreme case of providing full deposit guarantee, banks may be inclined to take on more risk to offer high interest rates to attract depositors as the threat of depositors withdrawing their funds is low. This may distort competition amongst banks and increase systemic risk in the banking system.

<sup>4</sup> Between early 2011 (when the current deposit protection limit of \$500,000 took effect) and June 2023,

in the real value of the protection limit. The coverage ratio will rise to about 92% of depositors, which complies with the IADI's standard.

6. The DPS Fund is funded by contributions from around 150 Scheme members (comprising all licensed banks unless exempted by the Board). Raising the protection limit will increase the contributions payable by Scheme members. Under the proposed protection limit of \$800,000, the total protected deposits will increase by 26%. The annual contributions payable by Scheme members will also increase by 26% on average, which should be relatively moderate and manageable.

## Levy System

7. Under the DPS, Scheme members are required to make annual contributions based on the “build-up levy”<sup>5</sup> during the “build-up” phase of the DPS Fund, or the “expected loss levy”<sup>6</sup> after the DPS Fund has reached its target fund size (equivalent to 0.25% of total protected deposits, currently at \$6.3 billion). The “build-up levy” rates are designed to be higher than the “expected loss levy” rates, such that the DPS Fund could reach a sufficient size and serve as an “insurance pool” within a reasonable time.

8. Since the launch of the DPS in 2006, Scheme members had been paying the “build-up levy”. With the net asset size of the DPS Fund reaching the target fund size in 2023, Scheme members have started paying the lower “expected loss levy” this year in accordance with the Deposit Protection Scheme Ordinance (Cap. 581) (“the Ordinance”).

9. Under the Ordinance, once Scheme members are making contributions at the “expected loss levy”, the “build-up levy” can only be charged again if the target fund size as a percentage (i.e. 0.25%) of protected deposits is amended<sup>7</sup>. With the protection limit recommended to be raised to \$800,000, the total protected deposits will increase, resulting in an increase in the monetary amount of the target fund size from the existing \$6.3 billion to \$8.2 billion. If the

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Hong Kong's consumer price index increased by about 39%.

<sup>5</sup> The DPS adopts a differential levy system, whereby the annual contribution payable by each Scheme member is determined with reference to the supervisory rating assigned to it by the Hong Kong Monetary Authority. The scale of “build-up levy” for individual Scheme members ranges from 0.0175% to 0.049% of the protected deposits, depending on the supervisory rating assigned to a bank.

<sup>6</sup> The scale of “expected loss levy” for individual Scheme members ranges from 0.0075% to 0.02% of the protected deposits, depending on the supervisory rating assigned to a bank. The “expected loss levy” is around 40% of the “build-up levy”.

<sup>7</sup> The requirement is set out in section 3(2) in Schedule 4 to the Ordinance.

target fund size as a percentage of protected deposits at its current level (i.e. 0.25%) is kept, it can strike a balance between maintaining the effectiveness of the DPS Fund and managing the additional costs to Scheme members. If the relevant provisions of the Ordinance are not amended, however, Scheme members will continue to make contributions only based on the lower “expected loss levy” rates. The DPS Fund will take more than ten years to reach the new target size, and such a protracted build-up period has a negative impact on the credibility of and public confidence in the DPS.

10. To ensure that the new target fund size (i.e. \$8.2 billion) can be reached within a reasonable timeframe, it is proposed that a technical amendment be made to the Ordinance such that the circumstances under which the “build-up levy” can be charged again will be broadened to cover the situation where the protection limit is raised while the target fund size as a percentage of protected deposits (i.e. 0.25%) remains unchanged. Based on the Board’s estimation, the DPS Fund will be able to reach its new target size in around three years under the “build-up levy” rates.

### **Deposit Protection Arrangement in the Event of a Bank Merger or Acquisition**

11. Currently, deposit protection under the DPS is on a per depositor per bank basis. In the event of a merger or acquisition of two (or more) banks, if a depositor has deposits with the affected banks, the depositor can only enjoy deposit protection at the merged bank up to the standard protection limit (currently at \$500,000).

12. According to the IADI’s updated Core Principles, in the event of a merger or acquisition of banks that are members of the same deposit insurance system, depositors of the merged banks should enjoy separate coverage up to the standard protection limit for each of the banks for a limited and publicly stated period, as defined in law or regulation. The objective is to provide a transitional period for depositors affected by bank mergers or acquisitions to consider if they wish to adjust their deposit portfolios (e.g. reallocating part of their deposits to another bank) to bring their deposit balances under the standard protection limit. Some jurisdictions<sup>8</sup> have already put in place such transitional arrangement.

13. As there are bank mergers or acquisitions in Hong Kong from time to time, it is proposed that this transitional arrangement be introduced to strengthen

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<sup>8</sup> For example, Canada, Singapore and the US.

the effectiveness of the DPS in maintaining banking stability. Specifically, for the affected depositors who have protected deposits with more than one of the Scheme members involved before a merger or acquisition, each depositor will, for a limited period of six months upon the bank merger or acquisition<sup>9</sup>, be entitled to compensation in respect of his/her protected deposits with each of the original Scheme members up to the DPS standard protection limit. Scheme members involved in the merger or acquisition will be required to notify<sup>10</sup> the affected depositors of the transitional arrangement before the effective date of merger or acquisition.

## **Representation Regime**

14. Under the Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (Cap. 581A) (“the Rules”), Scheme members are required to make representations regarding their DPS membership status and the protection status of their financial products. The objective is to assist members of the public to make an informed decision in selecting financial products.

### *Display of Membership Sign*

15. Section 3 of the Rules requires Scheme members to display the DPS membership sign at their relevant places of business. The sign should be displayed in such a manner that is reasonably visible to any person entering a Scheme member’s place of business (e.g. the customer entrance).

16. The Rules currently do not require Scheme members to display the DPS membership sign at their electronic platforms (e.g. websites or mobile applications). As electronic platforms have become major avenues for delivering banking services in recent years, it is proposed that Scheme members be required to display the DPS membership sign at their electronic platforms<sup>11</sup>, in addition to their physical branches.

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<sup>9</sup> Except for the case of a time deposit with remaining maturity exceeding six months from the date of merger or acquisition, where the enhanced protection period will be up to the original maturity date of that time deposit.

<sup>10</sup> Via the banks’ websites, major newspapers or other means which the Board may specify from time to time.

<sup>11</sup> Since the readable area of electronic platforms is generally smaller, a simplified DPS membership sign has been designed for display by Scheme members on electronic platforms.

## *Negative Disclosure Requirement*

17. Under the Rules, Scheme members are required to make a negative disclosure (i.e. to notify the customer that a financial product is not a protected deposit and is not protected by the DPS) and obtain an acknowledgement from the customer before completing each transaction of a non-protected financial product that has been described as a “deposit” in any advertisement, promotional material or document. A streamlined process is allowed under the circumstances prescribed under the Rules whereby the negative disclosure and the customer’s acknowledgement can be made and obtained on a one-off basis rather than on a transactional basis. An example is when Scheme members enter into non-protected deposit transactions with institutional customers who are generally in a better position than retail depositors to understand the risks of their investments.

18. In recent years, some private banks have suggested extending the streamlined process to their PB customers<sup>12</sup>, considering that PB customers (individuals who generally have richer investment knowledge and experience and hence better understanding of the risks of their investments) frequently enter into non-protected deposit transactions and find it unnecessary to listen to and acknowledge the same negative disclosure before each transaction.

19. The Board has therefore conducted a review of the negative disclosure requirements of other major jurisdictions<sup>13</sup>. Findings suggest that while many jurisdictions require negative disclosure on non-protected deposit products, such disclosure in general is only required to be made on a one-off basis when opening an account. Some jurisdictions do not require negative disclosure.

20. Having regard to the above considerations, it is proposed that a Scheme member may choose to apply the following streamlined approach when dealing with a PB customer in respect of a deposit product not protected by the DPS, which aligns with the arrangement for institutional customers and is commensurate with the investment knowledge and experience of PB customers -

- (a) making a one-off negative disclosure, meaning that a disclosure is not required if the Scheme member has previously made a negative disclosure and obtained an acknowledgement from the PB customer for the same product invested under the same account; and

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<sup>12</sup> PB customers refer to the customers of a private bank or the dedicated private banking unit of a bank, who are considered by the institution to be of high net worth.

<sup>13</sup> Including the Mainland, the US, the UK, Singapore and Canada.

- (b) providing an annual reminder to the PB customer that the product is a non-protected deposit and is not protected by the DPS.

## **THE BILL**

21. The main provisions of the Bill are as follows -

- (a) **Clause 4** amends section 27 of the Ordinance to raise the deposit protection limit from \$500,000 to \$800,000;
- (b) **Clause 5** adds new sections 27A, 27B and 27C to the Ordinance. Sections 27A and 27B provide for the time-limited enhanced protection limit for depositors in the event of a qualifying arrangement (merger or acquisition) of two or more Scheme members. Section 27C requires Scheme members involved in a qualifying arrangement to give a notice to depositors and the Board about the enhanced protection arrangement;
- (c) **Clause 6** adds a non-legislative note at the end of section 35(b) of the Ordinance to provide readers with more information that the amount of compensation payable to a depositor as prescribed under section 27 is subject to the specified provisions;
- (d) **Clause 7** amends section 38 of the Ordinance in relation to the raising of the deposit protection limit;
- (e) **Clause 8** amends section 50 of the Ordinance so that the defence is also available to an offense under section 27C(3);
- (f) **Clause 9** adds an express provision providing for the burden and standard of proof for the defence of reasonable excuse applicable to certain offences created in the Ordinance;
- (g) **Clause 10** adds section 58 to the Ordinance to provide for transitional matters;
- (h) **Clause 11** amends the definition of “amount of relevant deposit” set out in section 1 of Schedule 4 to the Ordinance and broadens the circumstances under which the build-up levy can be charged again;

- (i) **Clauses 14 and 15** respectively amend section 3 of, and add section 3A to, the Rules to set out the new requirements relating to the display of the simplified DPS membership sign on a Scheme member’s electronic platforms;
- (j) **Clause 16** amends section 4 of the Rules to provide for the exception under which compliance with that section is not required;
- (k) **Clauses 17 and 18** respectively amend section 6A of, and add section 6CA to, the Rules to streamline the negative disclosure regime;
- (l) **Clause 19** amends section 8 of the Rules to provide that a Scheme member commits an offence if section 3A(1) is contravened;
- (m) **Clause 20** updates the details of the membership sign of the DPS and adds the simplified DPS membership sign;
- (n) **Clauses 12 and 21** respectively replace the references to “申述” in the Chinese text in certain provisions of the Ordinance and the Rules respectively by “表述”; and
- (o) **Clauses 22 to 24** contain related amendments to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

B The existing provisions being amended are at **Annex B**.

## LEGISLATIVE TIMETABLE

22. The legislative timetable for the Bill is as follows –

Publication in the Gazette	3 May 2024
First Reading and commencement of Second Reading debate	8 May 2024
Resumption of Second Reading debate, committee stage and Third Reading	to be notified



## **IMPLICATIONS OF THE PROPOSAL**

23. The Bill is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of the Ordinance and its subsidiary legislation. It has no productivity, family, gender and environmental implications. It also has no civil service and financial implications on the part of the Government.

C 24. The sustainability and economic implications are set out at **Annex C**.

## **PUBLIC CONSULTATION**

25. The Board launched a three-month public consultation on the above proposals from 13 July to 12 October 2023, and received 33 submissions suggesting broad support for the proposals. In addition, the Board commissioned a public opinion survey during the consultation period, with findings showing that around 80% of the respondents supported the proposal to increase the protection limit to \$800,000. The banking industry also generally supported an increased protection limit. In response to the industry's concern that the next review of the DPS may only be conducted in 2030, the Board has undertaken to commence the next review three years after the implementation of the new protection limit (i.e. 2027) with the target of completing the review exercise in the following year.

26. We briefed the LegCo Panel on Financial Affairs on the proposals on 30 October 2023. Panel Members generally expressed support.

27. In accordance with section 51 of the Ordinance, the Board consulted the Financial Secretary and the Hong Kong Association of Banks on the proposed amendments to the Rules, and obtained their support.

## **PUBLICITY**

28. We will issue a press release on the gazettal of the Bill, and arrange a spokesperson to answer media enquiries.

## **BACKGROUND**

29. The DPS was fully launched in 2006 to provide protection for depositors and contribute to banking stability by reducing the risks of any bank run and potential contagion during a banking crisis. The DPS is operated by

the Board, a statutory body established under the Ordinance. All licensed banks, unless exempted by the Board, are Scheme members of the DPS. Most types of deposits, including deposits denominated in Renminbi or foreign currencies, are covered by the DPS as protected deposits. The DPS has not been triggered since its establishment.

## **ENQUIRIES**

30. Enquiries relating to the brief can be directed to Mr Justin To, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2067.

**Financial Services and the Treasury Bureau**  
**24 April 2024**

## Deposit Protection Scheme (Amendment) Bill 2024

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# A BILL

## To

Amend the Deposit Protection Scheme Ordinance and its subsidiary legislation to enhance the Deposit Protection Scheme by raising the deposit protection limit for depositors, adjusting the build-up levy mechanism, enhancing the protection of depositors in the event of bank mergers or acquisitions, and improving the regulation of the representation on membership of the Scheme and the protection of financial products under the Scheme; and to provide for related matters.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

##### 1. Short title and commencement

- (1) This Ordinance may be cited as the Deposit Protection Scheme (Amendment) Ordinance 2024.
- (2) Subject to subsection (3), this Ordinance comes into operation on 1 January 2025.
- (3) This Part and sections 4(2) and (4), 7, 10, 11, 14(3), 16(3), 17, 18 and 20(4) come into operation on 1 October 2024.

##### 2. Enactments amended

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

**Part 2****Amendments to Deposit Protection Scheme Ordinance  
(Cap. 581)****3. Section 2 amended (interpretation)**

After section 2(4)—

**Add**

“(5) A note located in the text of this Ordinance is provided for information only and has no legislative effect.”.

**4. Section 27 amended (entitlement to compensation: general)**

(1) Section 27(1), after “deposits concerned”—

**Add**

“, subject to the specified provisions,”.

(2) Section 27(1)—

**Repeal**

“shall not exceed \$500,000”

**Substitute**

“is not to exceed \$800,000”.

(3) Section 27(2), after “that trust”—

**Add**

“, subject to the specified provisions,”.

(4) Section 27(2)—

**Repeal**

“shall not exceed \$500,000”

**Substitute**

“is not to exceed \$800,000”.

(5) Section 27(3), English text, definition of *specified amount*, paragraph (b)—**Repeal**

“date.”

**Substitute**

“date;”.

(6) Section 27(3)—

**Add in alphabetical order**

“*specified provisions* (指明條文) means—

(a) section 27B; and

(b) section 12 of Schedule 4 to the Financial Institutions (Resolution) Ordinance (Cap. 628).”.

(7) Section 27(4), after “purposes of”—

**Add**

“the definition of *specified amount* in”.

**5. Sections 27A, 27B and 27C added**

After section 27—

**Add****“27A. Interpretation of sections 27A, 27B and 27C**

(1) This section applies in relation to the interpretation of this section and sections 27B and 27C.

(2) In this section and sections 27B and 27C—

*excluded transfer* (不適用轉讓) means a transfer by way of a property transfer instrument within the meaning of

section 2 of Schedule 4 to the Financial Institutions (Resolution) Ordinance (Cap. 628);

**material date** (關鍵日期), in relation to a qualifying arrangement, means the date on which—

- (a) the arrangement takes effect; and
- (b) the protected deposits maintained with one or more of the transferors in the arrangement are transferred, under the arrangement, to the resulting Scheme member in the arrangement;

**qualifying arrangement** (合資格安排)—see subsection (3);

**resulting Scheme member** (承轉方計劃成員)—see subsection (3);

**transferor** (轉讓方)—see subsection (3).

- (3) An arrangement (whether a merger, an acquisition or any other similar transaction) is a qualifying arrangement to which section 27B applies if—
  - (a) it involves the transfer (other than by way of an excluded transfer), on the date on which the arrangement takes effect, of protected deposits maintained with any of the parties to the arrangement that is a Scheme member (**transferor**) to another party to the arrangement (**resulting Scheme member**) to become protected deposits maintained with the resulting Scheme member; and
  - (b) the resulting Scheme member remains, or becomes, a Scheme member on that date.
- (4) For the purposes of this section and section 27B, a person maintains a protected deposit with a Scheme member if the deposit—

- (a) is held, in an account opened with the Scheme member, by the person in the person's own right;
- (b) is held, in an account opened with the Scheme member, by a depositor as a bare trustee for the person;
- (c) is held, in an account opened with the Scheme member, by a depositor in a client account for the person as the depositor's client; or
- (d) is held, in an account opened with the Scheme member, by the person as a trustee under one trust.

**27B. Time-limited enhanced protection limit following qualifying arrangement of Scheme members**

- (1) This section applies if—
  - (a) a qualifying arrangement takes effect and the material date of the arrangement falls on or after 1 January 2025;
  - (b) a person maintained protected deposits with 2 or more Scheme members involved in the qualifying arrangement immediately before the material date (**affected person**);
  - (c) the protected deposits maintained with the transferor (**original deposits**) are transferred, under the qualifying arrangement, to the resulting Scheme member on the material date; and
  - (d) during the enhanced protection period for the affected person, the resulting Scheme member becomes a failed Scheme member.
- (2) For determining the entitlement of the affected person to compensation under section 27(1) or (2) (as the case requires) in respect of the protected deposits the person

maintains with the resulting Scheme member, that section applies to the person with the modification that the reference to “\$800,000” is to be construed as a reference to “the enhanced protection limit”.

- (3) For the purposes of subsection (1)(d), the enhanced protection period, in relation to the affected person, is the period beginning on the material date of the qualifying arrangement and ending on—
- (a) subject to paragraphs (b) and (c)—the expiry of 6 months beginning on the material date (*6 months period*);
  - (b) if the original deposits contain a deposit with the original maturity date falling after the 6 months period—that maturity date; or
  - (c) if the original deposits contain 2 or more deposits with the original maturity dates falling after the 6 months period—the latest maturity date.
- (4) For the purposes of subsection (2), the enhanced protection limit as at the quantification date, in relation to the affected person—
- (a) subject to paragraph (b), is the aggregate of—
    - (i) \$800,000; and
    - (ii) an additional amount for every transferor with which the person maintained any protected deposits immediately before the material date of the qualifying arrangement that is equivalent to—
      - (A) if the total amount of such deposits plus the interest accrued on that amount calculated up to and including the material date are less than \$800,000—the

sum of that total amount and the interest;  
or

- (B) if the total amount of such deposits plus the interest accrued on that amount calculated up to and including the material date are not less than \$800,000—\$800,000,

regardless of the number or amount of deposits the person maintained with the resulting Scheme member during the enhanced protection period;  
or

- (b) if subsection (3)(b) or (c) applies and the quantification date falls after the 6 months period, is the aggregate of—
  - (i) \$800,000; and
  - (ii) an additional amount for every transferor with which the person maintained any protected deposits immediately before the material date of the qualifying arrangement that is equivalent to—
    - (A) if the total amount of such deposits with the original maturity dates falling after the 6 months period (which have not yet matured on the quantification date) plus the interest accrued on that amount calculated up to and including the material date are less than \$800,000—the sum of that total amount and the interest;  
or
    - (B) if the total amount of such deposits with the original maturity dates falling after the 6 months period (which have not yet

matured on the quantification date) plus the interest accrued on that amount calculated up to and including the material date are not less than \$800,000—\$800,000,

regardless of the number or amount of deposits the person maintained with the resulting Scheme member during the enhanced protection period.

### 27C. Notice to depositors about enhanced protection

- (1) A Scheme member involved in a qualifying arrangement (whether as a resulting Scheme member or one of the transferors) must, on or before the material date, send to every depositor of the Scheme member affected by the qualifying arrangement a written notice of the qualifying arrangement in the manner, together with the information, specified by the Board.
- (2) The Scheme member must, on or before the material date, inform the Board of the qualifying arrangement in writing and provide the Board with a copy of the notice referred to in subsection (1).
- (3) If a Scheme member, without reasonable excuse, fails to comply with subsection (2), every director and every chief executive of the Scheme member commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$400,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.”.

### 6. Section 35 amended (maximum amount of compensation payable to a depositor)

At the end of section 35(b)—

#### Add

“Note—

In section 35(b), the amount of compensation under section 27(1) or (2) is subject to the specified provisions as defined by section 27(3) (if those provisions apply).”.

### 7. Section 38 amended (subrogation)

Section 38(6)(a)—

#### Repeal

“\$500,000”

#### Substitute

“\$800,000”.

### 8. Section 50 amended (defences)

Section 50, after “15(6),”—

#### Add

“27C(3),”.

### 9. Section 50A added

After section 50—

#### Add

#### “50A. Reasonable excuse

- (1) This section applies if a provision of this Ordinance that creates an offence makes a reference to a reasonable excuse for a contravention to which the provision relates.



- (2) The reference to a reasonable excuse is to be construed as providing for a defence to a charge in respect of the contravention to which the provision relates.
- (3) A defendant is to be taken to have established that the defendant had a reasonable excuse for the contravention if—
- (a) sufficient evidence is adduced to raise an issue that the defendant had such a reasonable excuse; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

**10. Section 58 added**

After section 57—

**Add**

**“58. Transitional provisions in relation to Deposit Protection Scheme (Amendment) Ordinance 2024**

- (1) In this section—

*amending Ordinance* (《修訂條例》) means the Deposit Protection Scheme (Amendment) Ordinance 2024 ( of 2024);

*commencement date* (生效日期) means the date on which section 4(2) and (4) of the amending Ordinance comes into operation;

*pre-amended Ordinance* (《原有條例》) means this Ordinance as in force immediately before the commencement date;

*specified event* (指明事件) means a specified event within the meaning of section 22(1).

- (2) The amendments made to this Ordinance by the amending Ordinance do not apply if a specified event has occurred

before 1 October 2024, in which case the limit on the total amount of compensation to which a person may be entitled is the limit prescribed in section 27 (that is, \$500,000) before it is amended by section 4(2) and (4) of the amending Ordinance even though the payment of compensation is made after the commencement date.

- (3) The definition of *amount of relevant deposits* in section 1(1) of Schedule 4 to the pre-amended Ordinance continues to apply for calculating the amount of contribution payable by a new Scheme member under section 6(1) of Schedule 4 for the year of 2024.”.

**11. Schedule 4 amended (contributions to Fund)**

- (1) Schedule 4—

**Repeal**

“& 57]”

**Substitute**

“, 57 & 58]”.

- (2) Schedule 4, section 1(1), definition of *amount of relevant deposits*, paragraphs (a), (b), (c) and (d)—

**Repeal**

“\$500,000”

**Substitute**

“\$800,000”.

- (3) Schedule 4, section 3—

**Repeal subsection (9)**

**Substitute**

“(9) In this section—

*specified amendment* (指明的修訂) means—

- (a) an amendment to the definition of *specified percentage* in section 2(3); or
- (b) an amendment to increase the dollar amount specified in section 27(1) or (2) of this Ordinance.”.

12. “表述” substituted for “申述”

The following provisions, Chinese text—

- (a) section 49(1);
- (b) section 51(1)(db);
- (c) section 56(3)—

**Repeal**

“申述” (wherever appearing)

**Substitute**

“表述”.

**Part 3**

**Amendments to Deposit Protection Scheme  
(Representation on Scheme Membership and Protection  
of Financial Products under Scheme) Rules (Cap. 581  
sub. leg. A)**

13. **Section 2 amended (interpretation)**

- (1) Section 2(1), definition of *Membership Sign*, before “the Schedule”—

**Add**

“Part 1 of”.

- (2) Section 2(1), English text, definition of *relevant place of business*—

**Repeal**

“that business.”

**Substitute**

“that business;”.

- (3) Section 2(1), Chinese text, definition of *銀行業務*—

**Repeal**

“義。”

**Substitute**

“義；”.

- (4) Section 2(1)—

**Add in alphabetical order**

“*simplified Membership Sign* (簡化成員標誌) means the sign set out in Part 2 of the Schedule.”.

**14. Section 3 amended (display of Membership Sign)**

- (1) Section 3, heading, after “Sign”—

**Add**

“: relevant place of business”.

- (2) Section 3(1)—

**Repeal**

everything before “make”

**Substitute**

“(1) A Scheme member that carries on banking business in Hong Kong at any relevant place of business must”.

- (3) Section 3(1)—

**Repeal**

“and colours”

**Substitute**

“, design and colours”.

- (4) Section 3(1), after “specified in”—

**Add**

“Part 1 of”.

- (5) Section 3—

**Repeal subsections (2) and (3).****15. Section 3A added**

After section 3—

**Add****“3A. Display of simplified Membership Sign: electronic banking platform**

- (1) A Scheme member that carries on banking business in Hong Kong and maintains one or more electronic banking platforms must make known to the public that it is a member of the Scheme by displaying, at each of the platforms, a simplified Membership Sign—

- (a) in compliance with subsection (4); and
- 
- (b) in such a manner that the simplified Membership Sign is reasonably visible to any person accessing the platform.

- (2) Subsection (1) does not apply to a Scheme member (
- specified member*
- ) if—

- (a) it is an authorized institution incorporated outside Hong Kong (as defined by section 2(1) of the Banking Ordinance (Cap. 155));
- 
- (b) the home page of its electronic banking platform contains any information about the banking business of another person who is not a Scheme member; and
- 
- (c) its electronic banking platform does not contain any information to the effect that—

- (i) the specified member is a member of the Scheme; or
- 
- (ii) a deposit to be maintained with the specified member, or any other financial product offered by the specified member, is a protected deposit or a deposit qualified for protection by the Scheme.

- (3) For the purposes of subsection (2)(c), a display of a simplified Membership Sign by a specified member on an electronic banking platform, regardless of whether it is

displayed under subsection (1) or otherwise, is not to be regarded by itself as information to the effect specified in subsection (2)(c)(i) and (ii).

- (4) A simplified Membership Sign displayed by a Scheme member on an electronic banking platform, under subsection (1) or otherwise, must be—
- (a) in the design and colours specified in Part 2 of the Schedule;
  - (b) embedded with a hyperlink to the home page of the website of the Board or to the materials containing any information about the Scheme as specified by the Board; and
  - (c) if the platform contains any information about the banking business of another person who is not a Scheme member—displayed in such a manner that any person accessing the platform should reasonably be aware that the Scheme member, but not that other person, is a member of the Scheme.

- (5) In this section—

*electronic banking platform* (電子銀行平台), in relation to a Scheme member, means any information system that provides information about the Scheme member's banking business in Hong Kong through the Internet or other similar electronic or telecommunications network, whether it is web-based, application-based or otherwise.”

**16. Section 4 amended (membership representations in advertisements)**

- (1) Section 4, Chinese text, heading—

**Repeal**

“廣告內的成員申述”

**Substitute**

“在廣告中表述成員身分”。

- (2) After section 4(1)—

**Add**

“(1A) For the purposes of subsection (1)(b), a display of a Membership Sign or simplified Membership Sign by a Scheme member, regardless of whether it is displayed on an electronic banking platform as defined by section 3A(5) or otherwise, is not to be regarded by itself as information to the effect specified in subsection (1)(b)(i) and (ii).”.

- (3) Section 4(2)(b)—

**Repeal**

“HK\$500,000”

**Substitute**

“HK\$800,000”.

**17. Section 6A amended (disclosure as to financial products offered on or after 1 January 2011)**

Section 6A(3), after “6C”—

**Add**

“, 6CA”.

**18. Section 6CA added**

After section 6C—

**Add**

**“6CA. Disclosure not required if person who invests in financial products is private banking customer**

- (1) A Scheme member is not required to notify a person under section 6A(3) in respect of a financial product referred to in that section before the person invests in the financial product if—
- (a) the person is an individual who is a customer in the private banking business of the Scheme member;
  - (b) the person has maintained an account with the Scheme member in the course of the private banking business and the person is to invest in the financial product under that account;
  - (c) the person has previously made another investment in the financial product under that account on or after 1 October 2024, and the Scheme member has notified the person under section 6A(3), before the person makes that other investment, that the financial product is not a protected deposit and is not protected by the Scheme;
  - (d) the person has acknowledged in accordance with section 6A(4)(b) or (5)(b) that the person has received and understands the notice referred to in paragraph (c); and
  - (e) the Scheme member gives a notice to the person, at least once a year, in writing or by telephone or electronic mail transmission or through the Internet, notifying the person that the financial product is not a protected deposit and is not protected by the Scheme.
- (2) In this section—

*private banking* (私人銀行業務), in relation to a Scheme member, means the provision by the Scheme member of banking or other financial services (as defined by the specified provision) to individuals who are considered by the Scheme member to be of high net worth, but does not include such services so provided as part of the Scheme member’s retail banking (as defined by the specified provision);

*specified provision* (指明條文) means section 1 of the Fourteenth Schedule to the Banking Ordinance (Cap. 155).”.

**19. Section 8 amended (offences)**

Section 8—

**Repeal**

“or (2)”

**Substitute**

“, 3A(1)”.

**20. Schedule amended (Membership Sign)**

- (1) The Schedule, English text, heading—

**Repeal**

“Membership Sign”

**Substitute**

“Membership Signs”.

- (2) The Schedule—

**Repeal**

“2 & 3”

**Substitute**

“2, 3 & 3A]”.

- (3) The Schedule, after the heading—

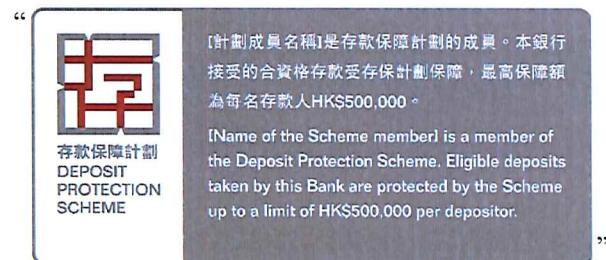
**Add**

**“Part 1**

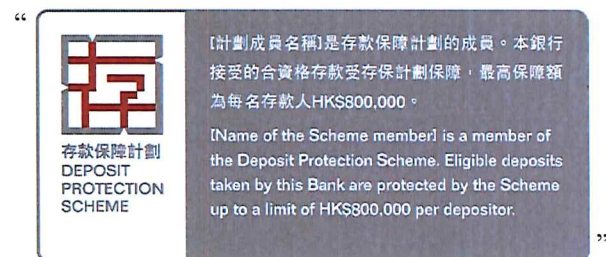
**Membership Sign under Section 3”.**

- (4) The Schedule—

**Repeal**



**Substitute**



- (5) The Schedule, after Part 1—

**Add**

**“Part 2**

**Simplified Membership Sign under Section 3A**



21. “表述” substituted for “申述”

- (1) The title, Chinese text—

**Repeal**

“申述”

**Substitute**

“表述”.

- (2) Section 6E, Chinese text, heading—

**Repeal**

“申述”

**Substitute**

“表述”.

- (3) Section 6E(1) and (2), Chinese text—

**Repeal**

“申述”

**Substitute**

“表述”.

**Part 4**

**Related Amendments to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)**

**22. Section 2 amended (interpretation)**

After section 2(12)—

**Add**

“(13) A note located in the text of this Ordinance is provided for information only and has no legislative effect.”.

**23. Section 265 amended (preferential payments)**

(1) At the end of section 265(1)(db)—

**Add**

“Note—

In section 265(1)(db)(i), (ii), (iii) and (iv), the amount of compensation under section 27(1) or section 27(2) of the Deposit Protection Scheme Ordinance (Cap. 581) is subject to the specified provisions as defined by section 27(3) of that Ordinance (if those provisions apply).”.

(2) Section 265(5D)(b)—

**Repeal**

“28(2)(b)”

**Substitute**

“21(2)(b)”.

(3) At the end of section 265(5J)—

**Add**

“Note—

In section 265(5J), the amount of compensation under section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581) is subject to the specified

provisions as defined by section 27(3) of that Ordinance (if those provisions apply).”.

**24. Section 265A amended (interpretation of Subdivision 2)**

Section 265A—

**Repeal subsection (5).**

### Explanatory Memorandum

The object of this Bill is to amend the Deposit Protection Scheme Ordinance (Cap. 581) (*Cap. 581*) and the Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (Cap. 581 sub. leg. A) (*Cap. 581A*) to provide for the following enhancements to the Deposit Protection Scheme (*Scheme*)—

- (a) to raise the deposit protection limit for depositors;
  - (b) to adjust the build-up levy mechanism;
  - (c) to enhance the protection of depositors in the event of bank mergers or acquisitions; and
  - (d) to improve the regulation of the representation on Scheme membership and the protection of financial products under the Scheme.
2. Clause 1 sets out the short title and provides for commencement.

#### To Raise Deposit Protection Limit for Depositors

3. Currently, the deposit protection limit under the Scheme for a person in respect of the deposits the person maintains with a Scheme member (being a licensed bank) is HK\$500,000. Clauses 4(2) and (4), 7, 11(2) and 16(3) raise the deposit protection limit from HK\$500,000 to HK\$800,000 (see the amended sections 27 and 38 of, and amended section 1 of Schedule 4 to, Cap. 581 and also amended section 4 of Cap. 581A).
4. In this connection, clause 20(4) amends the Schedule to Cap. 581A, replacing the existing Membership Sign with a new Membership Sign to show the raised deposit protection limit of HK\$800,000.

#### To Adjust the Build-up Levy Mechanism

5. Since the launch of the Scheme, Scheme members have been paying a build-up levy, which contributes to the target fund size (equivalent to 0.25% of the total protected deposits). Both the terms *build-up levy* and *target fund size* are defined in section 1(1) of Schedule 4 to Cap. 581. To ensure the new target fund size can be reached within a reasonable time, a technical amendment is proposed such that the circumstance under which the build-up levy can be charged again to cover the case where the deposit protection limit is raised. To this end, clause 11(3) amends the definition of *specified amendment* in section 3(9) of Schedule 4 to Cap. 581 to cater for the new deposit protection limit.

#### To Enhance the Protection of Depositors in the event of Qualifying Arrangement (Merger or Acquisition) of Scheme Member

6. Clause 5 adds new sections 27A, 27B and 27C to Part 5 of Cap. 581. The new section 27A provides for the definitions and interpretation for that section and the new sections 27B and 27C (including the meaning of *material date* and *qualifying arrangement*). The new section 27B provides that, in the case of a qualifying arrangement that involves 2 or more Scheme members, every person who has maintained protected deposits with them is eligible for an enhanced deposit protection limit (up to \$800,000 for the resulting Scheme member and for each transferor). Enhanced protection is provided for a period of 6 months beginning on the material date of the qualifying arrangement. This period can be lengthened if a time deposit is involved and its original maturity date falls after the expiry of the period.
7. The new section 27C requires each of the Scheme members involved in a qualifying arrangement to inform the depositors affected by the qualifying arrangement and the Hong Kong Deposit Protection Board (*the Board*) about the qualifying arrangement on or before the



material date. If a Scheme member fails to notify the Board, each of its directors and chief executives commits an offence.

8. Clause 8 amends section 50 of Cap. 581 so that the defence is also available to an offence under the new section 27C(3).
9. Clause 9 adds a new section 50A to Cap. 581 providing for the burden and standard of proof for the defence of reasonable excuse applicable to certain offences created in Cap. 581.
10. Section 35(b) of Cap. 581 provides that where an estimate is made under section 27(4)(d) of Cap. 581 for the amount of compensation payable to a depositor of a failed Scheme member, the amount is not to exceed the amount prescribed in section 27(1) or (2) of Cap. 581. Clause 6 adds a non-legislative note at the end of section 35(b) of Cap. 581 for providing more information to statute readers (that is, the amount of compensation under section 27(1) or (2) of Cap. 581 is subject to the specified provisions as defined by section 27(3) of Cap. 581). The status of the note is provided in the new section 2(5) of Cap. 581 (clause 3).
11. Clause 10 adds a new section 58 to Cap. 581 to provide for transitional matters.

**To Improve the Regulation of the Representation on Scheme Membership and the Protection of Financial Products under the Scheme**

12. Under the existing section 3 of Cap. 581A, Scheme members are required to display a Membership Sign at their relevant places of business. Clause 15 adds a new section 3A to Cap. 581A, requiring the Scheme members to also display a simplified Membership Sign at their electronic banking platforms. The simplified Membership Sign must comply with certain specifications, contain specified information and be embedded with a hyperlink to the home page of the website of the Board or to the materials containing information about the Scheme as specified by the Board. If the new section 3A is

contravened, the concerned Scheme member commits an offence under section 8 of Cap. 581A (as amended by clause 19).

13. In this connection, clause 16(2) adds a new subsection (1A) to section 4 of Cap. 581A to provide for the exception that compliance with section 4(2) of Cap. 581A is not required.
14. The existing section 6A(3) of Cap. 581A requires Scheme members to notify their customers that a certain financial product is not a protected deposit and is not protected by the Scheme (*disclosure*), and to obtain an acknowledgement from the customers before completing each transaction of a non-protected financial product that has been described as a deposit in any advertisement, promotional material or document.
15. Clause 18 adds a new section 6CA to Cap. 581A, providing that a Scheme member is not required to make the disclosure under section 6A(3) of Cap. 581A if an individual who invests in a non-protected financial product is a private banking customer. The new section 6CA allows Scheme members to make a one-off disclosure and obtain an acknowledgement from the customer for the same financial product, and to provide an annual notification to the customer containing the specified information.

**Related Amendments**

16. Clauses 12 and 21 respectively amend certain provisions of Cap. 581 as well as the title and certain provisions of Cap. 581A, in which the references to “申述” in the Chinese text is substituted by “表述”.
17. Section 265(1)(db) and (5J) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (*Cap. 32*) refers to the amount of compensation under section 27(1) or (2) of Cap. 581. Clause 23 adds a non-legislative note at the end of section 265(1)(db) and (5J) of Cap. 32 for providing more information to statute readers (that is, the amount of compensation under section 27(1) or (2) of Cap. 581 is subject to the specified provisions as defined by section

27(3) of Cap. 581). The status of the note is provided in the new section 2(13) of Cap. 32 (clause 22). Clause 24 contains a consequential amendment to section 265A of Cap. 32.

## 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

**applicant** (申請人) means a person who applies to the Tribunal under section 41(1), (2) or (3) for a review of—

- (a) a decision, or an assessment, of the Board; or
- (b) a decision of the Monetary Authority;

**authorized institution** (認可機構) has the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155);

**bank** (銀行) means a company—

- (a) that holds a valid banking licence; or
- (b) the banking licence of which is for the time being suspended under section 24 or 25 of the Banking Ordinance (Cap. 155);

**banking licence** (銀行牌照) means a banking licence granted under section 16 of the Banking Ordinance (Cap. 155);

**bare trustee** (被動受託人), in relation to a deposit or portion thereof, means a person holding the deposit or that portion on trust for a beneficiary where the beneficiary has the exclusive right to direct how the deposit or that portion is to be dealt with subject only to the right of the person to resort to the deposit or that portion to satisfy any outstanding charge or lien or for the payment of duty, taxes, costs or other outgoings;

**Board** (存保委員會) means the Hong Kong Deposit Protection Board established by section 3;

**chief executive** (行政總裁), in relation to a Scheme member or a bank, means the chief executive appointed under section 74 of the Banking Ordinance (Cap. 155) in respect of the Scheme member or the bank, and includes an alternate chief executive so appointed;

**client account** (客戶帳戶), in relation to a depositor, means an account maintained by the depositor with a bank for the purpose of holding money held by the depositor for a client of the depositor, whether or not other money may be held in the account;

**contribution** (供款) means—

- (a) the build-up levy within the meaning of Schedule 4;

(b) the expected loss levy within the meaning of Schedule 4;  
or

(c) the surcharge within the meaning of Schedule 4;

**deposit** (存款) has the meaning assigned to it in the definition of **deposit** in section 2(1) of the Banking Ordinance (Cap. 155) except that, despite paragraph (b)(ii) of that definition, it includes a loan of money referred to in paragraph (a) of that definition that is subject to any security (including any form of encumbrance, charge, mortgage, pledge, lien and right of set off) referable to the provision of any banking or financial services; (*Amended 11 of 2010 s. 3*)

**depositor** (存款人) means a person entitled to repayment of a deposit, whether made by him or not;

**director** (董事) includes any person who occupies the position of director, whatever the title of his office;

**Exchange Fund** (外匯基金) means the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);

**Exchange Fund Bill** (外匯基金票據) means any instrument described as such which is issued by the Government for the account of the Exchange Fund under the Exchange Fund Ordinance (Cap. 66);

**failed Scheme member** (無力償付成員) means a Scheme member in relation to which a specified event has, for the purposes of Part 5, occurred;

**function** (職能) includes a power and a duty;

**Fund** (存保基金) means the Deposit Protection Scheme Fund established by section 14;

**HKAB** (香港銀行公會) means The Hong Kong Association of Banks incorporated by section 3 of The Hong Kong Association of Banks Ordinance (Cap. 364);

**holding company** (控權公司) has the meaning given by section 13 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance; (*Replaced 28 of 2012 ss. 912 & 920*)

**information system** (資訊系統) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

**late payment fee** (逾期繳付費) means the late payment fee imposed by the Board under section 15(4)(a);

**liquidator** (清盤人) means a liquidator appointed by virtue of or under section 194 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); (*Amended 28 of 2012 ss. 912 & 920*)

**MA supervisory rating** (專員監管評級), in relation to a Scheme member, means the supervisory rating that—

- (a) is from time to time assigned to the Scheme member by the Monetary Authority; and
- (b) reflects the Monetary Authority's assessment of the Scheme member's overall financial condition and of the quality of the Scheme member's management;

**Monetary Authority** (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

**protected deposit** (受保障存款) means a deposit denominated in any currency and maintained with a Scheme member but does not include those specified in section 1 of Schedule 1;

**provisional liquidator** (臨時清盤人) means a provisional liquidator appointed under section 193, or appointed by virtue of section 194, of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); (*Amended 28 of 2012 ss. 912 & 920*)

**related person** (有關連人士), in relation to the Board, means—

- (a) a person employed or authorized by the Board under this Ordinance; or
- (b) a person appointed as an agent or adviser of the Board under this Ordinance;

**relevant deposit** (有關存款) means a deposit denominated in any currency and maintained with a Scheme member but does not include those specified in section 2 of Schedule 1;

**resolution authority** (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); (*Added 23 of 2016 s. 223 and E.R. 2 of 2017*)

**Scheme** (存保計劃) means the Deposit Protection Scheme established under section 11;

**Scheme member** (計劃成員) means a bank that is a member of the Scheme;

**subsidiary** (附屬公司) has the meaning given by section 15 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance; (*Amended 28 of 2012 ss. 912 & 920*)

**Tribunal** (審裁處) means the Deposit Protection Appeals Tribunal established by section 40;

**trustee** (受託人) does not include a bare trustee;

**US Treasury Bill** (美國國庫券) means a security, with an original maturity of not more than 12 months, issued by the Department of Treasury of the United States of America.

- (2) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.
- (3) If a deposit, or portion thereof, held by a depositor in a client account for a client is also held by the depositor as a trustee or bare trustee under a trust or bare trust, the deposit or portion is, for the purposes of this Ordinance, taken as being held by the depositor for the client and not as such trustee or bare trustee.
- (4) For the avoidance of doubt, any reference in this Ordinance to the commission of an offence by every director and every chief executive of a Scheme member or a bank (including any grammatical variations or cognate expressions of such reference) means that one or more than one of any such director and chief executive may be prosecuted for the offence.

**27. Entitlement to compensation: general**

- (1) Subject to section 31, a person is entitled, in respect of one or more protected deposits with a failed Scheme member that—
  - (a) the person holds in his own right;
  - (b) a depositor holds as a bare trustee for the person; or
  - (c) a depositor holds in a client account for the person as the depositor's client,

to compensation of the specified amount from the Fund under section 28 or 29, but the total amount of compensation to which the person is so entitled in respect of the deposits concerned shall not exceed \$500,000, regardless of the number or amount of deposits.

- (2) Subject to section 31, a person is entitled, in respect of one or more protected deposits with a failed Scheme member that the person holds as a trustee under one trust, to compensation of the specified amount from the Fund under section 30, but the total amount of compensation to which the person is so entitled in respect of the deposits held under that trust shall not exceed \$500,000, regardless of the number or amount of deposits.

- (3) In subsections (1) and (2)—

**specified amount** (指明款額), in relation to compensation to which a person is entitled from the Fund, means the aggregate of—

- (a) the total amount of protected deposits to which the person is entitled as at the quantification date; and

- (b) the interest accrued on that amount calculated up to and including the quantification date. *(Replaced 2 of 2016 s. 4)*
- (4) For the purposes of subsection (3)—
  - (a) if any protected deposit is not denominated in Hong Kong dollars, the deposit is to be converted into Hong Kong dollars at the midpoint between the selling and buying telegraphic transfer rates of exchange quoted by HKAB on the quantification date or, where no such rates are quoted, at an exchange rate determined by the Board; and *(Amended 2 of 2016 s. 4)*
  - (b)-(c) *(Repealed 2 of 2016 s. 4)*
  - (d) the Board may determine the amount of interest accrued on deposits by making an estimate that is reasonable and appropriate in the circumstances of the case if the Board considers that— *(Amended 2 of 2016 s. 4)*
    - (i) there is uncertainty as to the entire amount of interest so accrued;
    - (ii) the time required to ascertain the entire amount of interest so accrued would be so long as to unduly delay the payment of compensation to the person entitled to the compensation; or
    - (iii) the costs and expenses that would be incurred in the calculation made to ascertain the entire amount of interest so accrued would, having regard to the likely difference between the ascertained amount and the estimated amount of the interest, outweigh the benefits of making the calculation. *(Added 11 of 2010 s. 4)*

*(Amended 11 of 2010 s. 4)*

### **35. Maximum amount of compensation payable to a depositor**

The amount of compensation payable to a depositor of a failed Scheme member in accordance with this Ordinance is not to exceed

—

- (a) the amount in respect of which the depositor would, on the winding up of the failed Scheme member, be entitled to priority under section 265(1)(db) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or *(Amended 28 of 2012 ss. 912 & 920)*

- (b) where an estimate has been made under section 27(4)(d) as a result of which the specified amount of compensation to which the depositor is entitled as referred to in section 27(1) or (2) is greater than the amount referred to in paragraph (a), that specified amount subject to the limit prescribed in section 27(1) or (2). *(Amended 2 of 2016 s. 6)*

*(Replaced 11 of 2010 s. 5.)*

### **38. Subrogation**

- (1) If the Board makes a payment of compensation to a depositor of a Scheme member from the Fund—
  - (a) subject to subsection (2) and despite any rule of law, the Board is subrogated, to the extent of the aggregate amount, to all the rights and remedies of the depositor in relation to all the depositor's deposits with the Scheme member, in priority over—
    - (i) the rights and remedies of the depositor in relation to those deposits; and
    - (ii) the rights and remedies of any person who is subrogated, whether or not before the Board's subrogation, to the rights and remedies mentioned in subparagraph (i); and *(Replaced 2 of 2016 s. 8)*
  - (b) until the Board has been reimbursed in full the aggregate amount, the depositor, or any person who is subrogated, whether or not before the Board's subrogation, to the rights and remedies mentioned in paragraph (a)(i), has no right in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of those deposits any amount from, or out of the assets of, the Scheme member. *(Amended 2 of 2016 s. 8)*
- (1A) Subsections (1B) and (1C) apply in relation to the recovery by the Board of a payment of compensation made to a depositor of a Scheme member from the Fund, whether or not the Scheme member is wound up. *(Added 2 of 2016 s. 8)*
- (1B) Without limiting section 37, the Board is entitled to recover from, or out of the assets of, the Scheme member the aggregate amount in accordance with subsection (1C). *(Added 2 of 2016 s. 8)*
- (1C) For the purposes of subsection (1B), the following do not apply in relation to the rights and remedies of the depositor, to which the Board is subrogated, up to the aggregate amount—



- (a) any law relating to set off (including section 35 of the Bankruptcy Ordinance (Cap. 6) or that section as applied under section 264 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)); and
  - (b) any right or obligation (however arising) with regard to set off or that has the effect of set off. (*Added 2 of 2016 s. 8*)
- (2) The Board is not subrogated to any rights and remedies of the depositor in respect of compensation payable out of the Investor Compensation Fund established under section 236 of the Securities and Futures Ordinance (Cap. 571).
- (3) The Board may maintain an action in respect of the rights and remedies of a depositor to which it is subrogated in the name of the depositor or in its own name.
- (4) For the avoidance of doubt, the rights and remedies of a depositor to which the Board is subrogated include the rights and remedies of the depositor in respect of so much of his deposits as the depositor would, on the winding up of the Scheme member, be entitled to priority under section 265(1) (db) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). (*Amended 28 of 2012 ss. 912 & 920*)
- (5) For the purposes of this section, the net amount of a payment of compensation to a depositor accrues interest, at the rate set out in subsection (6), for the period beginning with the date of the payment and ending with— (*Amended 2 of 2016 s. 8*)
  - (a) if a winding-up order has been made by the Court of First Instance in respect of a Scheme member, the date of the winding-up order made by the Court of First Instance; (*Replaced 14 of 2016 s. 186*)
  - (b) (*Repealed 14 of 2016 s. 186*)
  - (c) in any other case, the date on which the Board receives full reimbursement in respect of the aggregate amount. (*Amended 2 of 2016 s. 8*)
- (6) The interest rate referred to in subsection (5) is—
  - (a) the rate at which interest is for the time being payable in respect of a Hong Kong dollar savings account with deposit amount of \$500,000, quoted by the note-issuing banks within the meaning of section 2 of the Legal Tender Notes Issue Ordinance (Cap. 65); or (*Amended 11 of 2010 s. 8*)

- (b) if different rates are quoted by different note-issuing banks, the rate determined by the Board as the average of those rates.
- (6A) This section applies to all the depositor's deposits with the Scheme member, whether or not they are protected deposits. *(Added 2 of 2016 s. 8)*
- (7) In this section—
- aggregate amount** (合計總額) means—
- (a) the net amount; and
  - (b) any interest accrued on that amount calculated in accordance with subsection (5);
- net amount** (淨額), in relation to a payment of compensation made to a depositor of a Scheme member from the Fund, means the amount of the payment less the amount of excess, if any, that has been recovered by the Board from the depositor under section 37(3). *(Replaced 2 of 2016 s. 8)*

## 50. Defences

In any proceedings for an offence under section 13(11), 15(6), 46(7) or 48(6) or (7), 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.

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## Schedule 4

[ss. 2, 15, 48, 54 & 57]  
*(Amended 11 of 2010 s. 13; 2  
of 2016 s. 11)*

## Contributions to Fund

### 1. Interpretation

- (1) In this Schedule, unless the context otherwise requires—
- amount of relevant deposits** (有關存款款額), in relation to a Scheme member, means, subject to subsection (2), the aggregate amount held by all depositors of the Scheme member, being the sum arrived at by adding up any of the following amounts held by each of the depositors of the Scheme member—

- (a) the amount of all relevant deposits held by one person, as a depositor, with the Scheme member in that person's own right, up to a limit of \$500,000;
- (b) the amount of all relevant deposits held by a depositor, as a bare trustee under one bare trust, with the Scheme member, up to a limit of \$500,000;
- (c) the amount of all relevant deposits held by a depositor with the Scheme member in one client account, up to a limit of \$500,000; or
- (d) the amount of all relevant deposits held by a depositor, as a trustee under one trust, with the Scheme member, up to a limit of \$500,000; (*Replaced 11 of 2010 s. 13. Amended 2 of 2016 s. 11*)

**build-up levy** (建立期徵費) means the build-up levy payable by a Scheme member under section 3(4);

**expected loss levy** (預期損失徵費) means the expected loss levy payable by a Scheme member under section 4(2);

**specified date** (指明日期), in relation to a year, means—

- (a) 20 October of that year; or
- (b) where 20 October of that year is a public holiday, the day (not being a public holiday) immediately preceding that date; (*Added L.N. 107 of 2006. Amended L.N. 175 of 2006*)

**start-up year** (啟動年) means the year in which this Schedule commences\*; (*Added L.N. 107 of 2006*)

**surcharge** (附加費) means the surcharge payable by a Scheme member under section 5(2);

**target fund size** (基金目標金額), in relation to a year, means the size of the Fund that the Board seeks to achieve and maintain for that year.

(2) In the definition of **amount of relevant deposits**—

- (a) a reference to a relevant deposit—
  - (i) includes a portion of the deposit; and
  - (ii) does not include any interest accrued on the deposit;
- (b) for the purposes of paragraph (a) of that definition, if a relevant deposit is held by a depositor consisting of 2 or more persons—

- (i) subject to subparagraph (ii), each of the 2 or more persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the Board; and
- (ii) if the 2 or more persons carry on business in partnership, those persons are a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership; and *(Amended 2 of 2016 s. 11)*
- (c) for the purposes of paragraphs (b) and (d) of that definition, if a relevant deposit is held by a depositor consisting of 2 or more persons, those persons are a single and continuing body of persons as distinct from the persons who may from time to time be the bare trustees or trustees. *(Amended 2 of 2016 s. 11)*
- (d)-(f) *(Repealed 2 of 2016 s. 11)*
- (3) For the purposes of this Schedule, the target fund size is reached in a particular year if the sum of—
  - (a) the aggregate amount of contributions payable by all Scheme members for that particular year; and
  - (b) the balance of the Fund as at the specified date of the immediately preceding year, *(Amended L.N. 107 of 2006)*
 is equal to or greater than the target fund size for that particular year.

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Editorial Note:

\* Commencement date: 25 September 2006.

## 2. **Calculation of target fund size and balance of Fund**

- (1) For the purposes of this Schedule, the target fund size for any particular year is the specified percentage of the aggregate of the amount of relevant deposits maintained with each of the Scheme members as at the specified date of the immediately preceding year.
- (2) For the purposes of this Schedule, the balance of the Fund as at the specified date of any year is the amount by which the total assets of the Fund exceed its total liabilities as shown in a balance sheet of the Fund, as at that date, prepared by the Board.
- (3) In this section, ***specified percentage*** (指明百分比) means 0.25%. *(Amended 11 of 2010 s. 13)*

*(Amended L.N. 107 of 2006)*

3. **Build-up levy**

- (1) This section applies to any year up to and including the year in which the target fund size has been reached for the first time after the commencement\* of this Schedule.
- (2) If, after the year in which the target fund size has been reached for the first time after the commencement of this Schedule, the target fund size for a particular year becomes, as a result of a specified amendment, greater than the balance of the Fund as at the specified date of the immediately preceding year, this section also applies to— (*Amended L.N. 107 of 2006*)
  - (a) that particular year; and
  - (b) any subsequent year up to and including the year in which the target fund size is reached for the first time after the commencement of that specified amendment.
- (3) If, after the year in which the target fund size has been reached for the first time after the commencement of a specified amendment, the target fund size for a particular year becomes, as a result of another specified amendment, greater than the balance of the Fund as at the specified date of the immediately preceding year, this section also applies to— (*Amended L.N. 107 of 2006*)
  - (a) that particular year; and
  - (b) any subsequent year up to and including the year in which the target fund size is reached for the first time after the commencement of that other specified amendment.
- (4) A build-up levy is payable by a Scheme member for any year to which this section applies.

- (5) Subject to subsections (6) and (7) and section 6, the amount of build-up levy payable by a Scheme member for any year (other than the start-up year) is the sum calculated by multiplying the amount of relevant deposits maintained with the Scheme member as at the specified date of the immediately preceding year by the percentage specified in column 2 of the following Table opposite the MA supervisory rating of the Scheme member specified in column 1 of that Table. *(Amended L.N. 107 of 2006)*

Table

Column 1	Column 2
MA supervisory rating	Percentage
1	0.0175%
2	0.028%
3	0.0385%
4 or 5	0.049%

*(Amended 11 of 2010 s. 13)*

- (5A) Subject to section 6, the amount of build-up levy payable by a Scheme member for the start-up year is such portion of the amount of build-up levy that would have been payable by the Scheme member for the start-up year if that Scheme member had been a member of the Scheme during the whole of the year that the number of days during which this Schedule is in operation in the start-up year bears to 365. *(Added L.N. 107 of 2006)*
- (5B) That amount of build-up levy that would have been payable for the start-up year is the sum calculated by multiplying the amount of relevant deposits maintained with the Scheme member as at—
- (a) if the Scheme member becomes a member of the Scheme on or before the specified date in the year immediately preceding the start-up year, that specified date; or
  - (b) if the Scheme member becomes a member of the Scheme after that specified date, the date on which it becomes a member of the Scheme,
- by the percentage specified in column 2 of the Table set out in subsection (5) opposite the MA supervisory rating of the Scheme member specified in column 1 of that Table. *(Added L.N. 107 of 2006)*

- (6) If the amount by which the target fund size for a particular year exceeds the balance of the Fund as at the specified date of the immediately preceding year is smaller than the aggregate amount of build-up levies that would, but for this subsection, have been payable by all Scheme members for that particular year in accordance with subsection (5), the amount of build-up levy payable by a Scheme member for that particular year is such portion of the amount of build-up levy that would have been payable by the Scheme member for that year in accordance with subsection (5) that such amount of excess bears to such aggregate amount. (*Amended L.N. 107 of 2006*)
- (7) If the target fund size for a particular year does not exceed the balance of the Fund as at the specified date of the immediately preceding year, no build-up levy is payable for that particular year. (*Amended L.N. 107 of 2006*)
- (8) For the avoidance of doubt, the percentage specified in column 2 of the Table in subsection (5) may be revised by way of an amendment to this section before, during or after the year in which the target fund size is reached for the first time after the commencement of this Schedule.
- (9) In this section, *specified amendment* (指明的修訂) means an amendment to the definition of *specified percentage* in section 2(3).

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Editorial Note:

\* Commencement date: 25 September 2006.

#### 4. **Expected loss levy**

- (1) This section applies to any year after the year in which the target fund size has been reached for the first time after the commencement\* of this Schedule, except a year to which section 3 applies by virtue of subsection (2) or (3) of that section.
- (2) An expected loss levy is payable by a Scheme member for any year to which this section applies.

- (3) Subject to section 6, the amount of expected loss levy payable by a Scheme member for any year is the sum calculated by multiplying the amount of relevant deposits maintained with the Scheme member as at the specified date of the immediately preceding year by the percentage specified in column 2 of the following Table opposite the MA supervisory rating of the Scheme member specified in column 1 of that Table. (*Amended L.N. 107 of 2006*)

Column 1 MA supervisory rating	Column 2 Percentage
1	0.0075%
2	0.01%
3	0.015%
4 or 5	0.02%

- (4) For the avoidance of doubt, the percentage specified in column 2 of the Table in subsection (3) may be revised by way of an amendment to this section before, during or after the year in which the target fund size is reached for the first time after the commencement of this Schedule.

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Editorial Note:

\* Commencement date: 25 September 2006.

## 5. **Surcharge**

- (1) This section applies to any year—
- (a) to which section 4 applies; and
  - (b) 70% of the target fund size for which is greater than the balance of the Fund as at the specified date of the immediately preceding year. (*Amended L.N. 107 of 2006*)
- (2) A surcharge is payable by a Scheme member for any year to which this section applies.
- (3) Subject to section 6, the amount of surcharge payable by a Scheme member for any year is a specified portion of the amount of build-up levy that would have been payable by the Scheme member for that year in accordance with section 3(5) as if section 3 applied to that year.
- (4) The aggregate amount of surcharges payable by all Scheme members for any year is—
- (a) the difference between—



- (i) the aggregate amount of build-up levies that would have been payable by all Scheme members for that year in accordance with section 3(5) as if section 3 applied to that year; and
  - (ii) the aggregate amount of expected loss levies payable by all Scheme members for that year in accordance with section 4(3); or
- (b) 30% of the amount by which the target fund size for that year exceeds the balance of the Fund as at the specified date of the immediately preceding year, (*Amended L.N. 107 of 2006*)

whichever is the lower.

- (5) In this section, ***specified portion*** (指明部分), in relation to the amount of build-up levy that would have been payable for a year, means the portion that the aggregate amount of surcharges payable by all Scheme members for that year, calculated in accordance with subsection (4), bears to the aggregate amount of build-up levies that would have been payable by all Scheme members for that year, calculated in accordance with subsection (4)(a)(i).

## 6. **Calculation of contribution for new Scheme members**

- (1A) This section applies to a Scheme member that becomes a member of the Scheme by virtue of section 12(3) of this Ordinance on or after the commencement\* of this Schedule. (*Added L.N. 107 of 2006*)
- (1) The amount of contribution payable by a Scheme member for the year in which it becomes a member of the Scheme — (*Amended L.N. 107 of 2006*)
- (a) shall be calculated on the basis of the amount of relevant deposits maintained with the Scheme member as at the date it becomes a member of the Scheme; and
  - (b) is that proportion of the amount of projected full-year contribution for that year that the number of days during which the Scheme member is a member of the Scheme in that year bears to 365.
- (2) If a Scheme member becomes a member of the Scheme after the specified date in any particular year, the amount of contribution payable for the subsequent year shall be calculated on the basis of the amount of relevant deposits maintained with the Scheme member as at the date it becomes a member of the Scheme.

- (3) In this section, ***projected full-year contribution*** (預計全年供款), in relation to a year in which a Scheme member becomes a member of the Scheme, means the amount of contribution that would have been payable by the Scheme member if that Scheme member had been a member of the Scheme during the whole of that year.

*(Amended L.N. 107 of 2006)*

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Editorial Note:

\* Commencement date: 25 September 2006.

## 7. **Minimum amount of contribution**

Notwithstanding anything in this Schedule, if the amount of contribution payable by a Scheme member for any year is less than \$50,000, a minimum contribution equal in amount to that proportion of \$50,000 that— *(Amended L.N. 107 of 2006)*

- (a) in the case of the start-up year—
- (i) where the Scheme member becomes a member of the Scheme before the commencement\* of this Schedule, the number of days during which this Schedule is in operation in that year bears to 365;
  - (ii) where the Scheme member becomes a member of the Scheme on or after the commencement of this Schedule, the number of days during which the Scheme member is a member of the Scheme in that year bears to 365; or
- (b) in the case of any other year, the number of days during which the Scheme member is a member of the Scheme in that year bears to 365,

is payable by the Scheme member for that year.

*(Amended L.N. 107 of 2006)*

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Editorial Note:

\* Commencement date: 25 September 2006.

## 8. **Rebate**

- (1) A rebate shall be made by the Board in any year if 115% of the target fund size for that year is smaller than the balance of the Fund as at the specified date of the immediately preceding year. *(Amended L.N. 107 of 2006)*

- (2) For any year in which a rebate is required to be made by the Board, the amount of rebate payable to a Scheme member is such portion of the aggregate amount of rebates payable to all Scheme members in that year, calculated in accordance with subsection (3), that the amount of net contribution by the Scheme member during the relevant period bears to the aggregate of the amount of net contribution by each of the Scheme members during the same period.
- (3) The aggregate amount of rebates payable to all Scheme members in any particular year is 30% of the amount by which the balance of the Fund as at the specified date of the immediately preceding year exceeds the target fund size for that particular year. (*Amended L.N. 107 of 2006*)
- (4) In this section—

***amount of net contribution*** (供款淨額), in relation to a Scheme member during a period, means the amount of contribution paid by the Scheme member during the period less the amount of rebate received by the Scheme member during that period;

***relevant period*** (有關期間) means the period of 10 years immediately preceding the year in which the rebate is required to be made by the Board or the period since the commencement\* of this Schedule, whichever is the shorter.

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Editorial Note:

\* Commencement date: 25 September 2006.

## 9. **Refund of contribution**

- (1) A proportion of the contribution paid by a Scheme member for the year in which it ceases to be a member of the Scheme shall be refunded to that Scheme member.
- (2) The amount to be refunded is that proportion of the contribution that the number of days within the relevant period in the year bears to the number of days within the contribution period in that year. (*Amended L.N. 107 of 2006*)
- (3) In this section—
- contribution period*** (供款期間)—
- (a) in relation to the start-up year—
- (i) in the case where the Scheme member becomes a member of the Scheme before the commencement\* of this Schedule, means the period during which this Schedule is in operation in that year; or

- (ii) in the case where the Scheme member becomes a member of the Scheme on or after the commencement of this Schedule, means the period that begins on the date on which the Scheme member becomes a member of the Scheme and expires on 31 December of that year;
- (b) in relation to any other year—
  - (i) in the case where the Scheme member is a member of the Scheme on 1 January of that year, means the period that begins on 1 January and expires on 31 December of that year; or
  - (ii) in the case where the Scheme member becomes a member of the Scheme after 1 January of that year, means the period that begins on the date on which the Scheme member becomes a member of the Scheme and expires on 31 December of that year;

***relevant period*** (有關期間), in relation to a year, means the period that begins on the date on which a Scheme member ceases to be a member of the Scheme and expires on 31 December of that year. (*Added L.N. 107 of 2006*)

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Editorial Note:

\* Commencement date: 25 September 2006.

**49. False statements regarding Scheme membership and protected deposits**

- (1) No person shall, with intent to deceive, make any false, misleading or deceptive statement or representation as to whether or not—
- (a) a person is a Scheme member; or
  - (b) a deposit, or any other financial product, is a protected deposit.
- (2) Any person who contravenes subsection (1) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$400,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

**51. Power of Board to make rules**

- (1) The Board may, after consultation with the Financial Secretary and HKAB, make rules—
- (a) prescribing the requirements in accordance with which Scheme members shall maintain those information systems and other records to which the Board would, on the occurrence of a specified event, have access under section 32(2)(a);
  - (b) prescribing the manner in which compensation is to be paid to depositors from the Fund;
  - (c) prescribing the manner in which—
    - (i) contributions or late payment fees are to be paid by Scheme members; or
    - (ii) rebates or refunds of contributions are to be paid to Scheme members;
  - (d) requiring a Scheme member to make known to the public under specified circumstances that it is a member of the Scheme or will cease to be a member of the Scheme, and prescribing the manner in which the requirement is to be complied with; (*Replaced 11 of 2010 s. 10*)
  - (da) requiring a Scheme member—

- (i) to make known to the public under specified circumstances as to whether a deposit or any other financial product offered by the Scheme member is or is not a protected deposit; or
  - (ii) to obtain under specified circumstances an acknowledgment from any person placing or holding a deposit with, or investing in or holding any other financial product offered by, the Scheme member of having received a notification from the Scheme member as to whether the deposit or financial product is or is not a protected deposit,
- and prescribing the manner in which the requirement is to be complied with; *(Added 11 of 2010 s. 10)*
- (db) imposing restrictions on Scheme members relating to the descriptions or representations of any financial product as a deposit or a specified kind of deposit; *(Added 11 of 2010 s. 10)*
  - (e) prescribing anything required to be prescribed under this Ordinance other than Part 6 and section 5 of Schedule 3; and
  - (f) generally providing for the better performance of the functions of the Board.
- (2) Rules made under this section may—
- (a) provide that a contravention of a specified provision of the rules is an offence punishable—
    - (i) on conviction on indictment by a fine at level 6 and imprisonment for 2 years; or
    - (ii) on summary conviction by a fine at level 3 and imprisonment for 6 months; and
  - (b) provide for any specified defence to be available in proceedings for such an offence.
- (3) Rules made under this section shall not require a Scheme member to maintain any information system or other records that contain information or documents, or to submit any information or document, relating to any person who is—
- (a) a beneficiary for whom a deposit, or portion thereof, maintained with the Scheme member is held by a depositor as a trustee or bare trustee; or
  - (b) a client for whom a deposit, or portion thereof, maintained with the Scheme member is held by a depositor in a client account.

**56. Transitional provisions in relation to Deposit Protection Scheme (Amendment) Ordinance 2010**

- (1) The amendments made to this Ordinance by the Deposit Protection Scheme (Amendment) Ordinance 2010 (11 of 2010) (*the amending Ordinance*) do not apply if a specified event within the meaning of section 22(1) has occurred before the commencement\* of section 4 of the amending Ordinance, in which case the limit on the total amount of compensation to which a depositor may be entitled is the limit prescribed in section 27 before it is amended by that section 4 even though the payment of compensation is made after the commencement of that section 4.
- (2) Rules made under section 51(1)(da) as added by section 10(2) of the amending Ordinance—
  - (a) may provide that any requirement imposed by those rules applies in relation to a deposit or any other financial product that is in existence at the commencement of those rules; and
  - (b) may prescribe the manner in which the requirement in relation to the deposit or financial product is to be complied with.
- (3) Rules made under section 51(1)(db) as added by section 10(3) of the amending Ordinance may provide that those rules, in so far as they relate to the imposition of restrictions on Scheme members relating to the descriptions or representations of any financial product as a structured deposit, do not have effect in relation to any financial product that was being described or represented as a structured deposit immediately before the commencement of those rules.

*(Added 11 of 2010 s. 11)*

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Editorial Note:

\* Commencement date : 1 January 2011.

## 2. Interpretation

(1) In these Rules, unless the context otherwise requires— (*L.N. 131 of 2010*)

**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.

(2) A reference in these Rules to a deposit qualified for protection by the Scheme is to be construed as a deposit denominated in any currency and maintained with a Scheme member, but does not include a deposit specified in section 1(a), (aa), (b), (c) or (d) of Schedule 1 to the Ordinance. (*L.N. 131 of 2010*)

## 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 or a deposit qualified for protection by the Scheme, (*L.N. 131 of 2010*)

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 or a deposit qualified for protection by the Scheme.
- (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\$500,000 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 deposit qualified for protection by the Scheme, 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.

*(L.N. 131 of 2010)*

**6A. Disclosure as to financial products offered on or after 1 January 2011**

- (1) This section applies where a financial product offered by a Scheme member on or after 1 January 2011 is not a protected deposit but has been 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 must 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 sections 6B, 6C and 6D, where the financial product is not a bearer instrument, the Scheme member must, before a person 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—
    - (i) notify the person in accordance with subsection (4) (a) that the financial product is not a protected deposit and is not protected by the Scheme; and
    - (ii) obtain the person's acknowledgment of the notice in accordance with subsection (4)(b); or

- (b) if the financial product is offered to the person by any other means—
  - (i) notify the person in accordance with subsection (5)(a) that the financial product is not a protected deposit and is not protected by the Scheme; and
  - (ii) obtain the person’s acknowledgment of the notice in accordance with subsection (5)(b).
- (4) The notice given under subsection (3)(a)—
  - (a) must—
    - (i) comply with the requirements in section 7B(1); or
    - (ii) be given by the means by which the offer is made; and
  - (b) must be acknowledged by the person—
    - (i) in writing that the person has received and understands the notice; or
    - (ii) if the notice is given otherwise than in writing, by the means by which the notice is given that the person has received and understands the notice.
- (5) The notice given under subsection (3)(b)—
  - (a) must comply with the requirements in section 7B(1); and
  - (b) must be acknowledged by the person in writing that the person has received and understands the notice.
- (6) 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.

*(L.N. 131 of 2010)*

## 8. Offences

If a Scheme member contravenes section 3(1) or (2), 4(2) or (3), 5(2), 6(2) or (3), 6A(2) or (3) or 7(1), the Scheme member commits an offence and is liable— *(L.N. 131 of 2010)*

- (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.

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## Schedule

[ss. 2 & 3]

## Membership Sign



*(Schedule replaced L.N. 131 of 2010)*

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

(Cap. 581, section 51(1)(d) and (2))

*(Enacting provision omitted—E.R. 4 of 2023)*

[25 September 2006] *L.N. 110 of 2006*

*(Format changes—E.R. 4 of 2023)*

**6E. Descriptions or representations of financial products as structured deposits**

- (1) A Scheme member may not describe any financial product offered by it as a structured deposit, or otherwise make any representation in respect of any financial product offered by it that indicates or would reasonably be construed as indicating that the financial product is a structured deposit, if that financial product does not fall within section 2A of Schedule 1 to the Ordinance.
- (2) This section does not have effect in relation to any financial product offered by a Scheme member that is described as, or in respect of which any representation is made that indicates or would reasonably be construed as indicating that it is, a structured deposit at any time before 1 July 2011.

*(L.N. 131 of 2010)*

## 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—  
***a resolution for voluntary winding up*** (自動清盤決議) has the meaning assigned to it by section 228(2); (*Added 6 of 1984 s. 2*)

***agent*** (代理人) does not include a person's counsel acting as such; (*Added 6 of 1984 s. 2*)

***amend*** (修訂) includes delete, add to or vary and the doing of all or any of such things simultaneously; (*Added 30 of 2004 s. 2*)

***articles*** (章程細則), in relation to a company, means the articles of association of the company;

**Note—**

Please also see section 98 of the Companies Ordinance (Cap. 622). A condition of an existing company's memorandum of association is to be regarded as a provision of the company's articles. (*Replaced 28 of 2012 ss. 912 & 920*)

***authorized financial institution*** (認可財務機構) means an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155); (*Added 12 of 1998 s. 2. Amended 49 of 1995 s. 53*)

***book and paper*** (簿冊及文據) and ***book or paper*** (簿冊或文據) include accounts, deeds, writings, and documents;

***certificate of solvency*** (有償債能力證明書) means a certificate issued under section 233; (*Added 28 of 2003 s. 2*)

***Commission*** (監察委員會) means—

(a) subject to paragraphs (b) and (c), the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);

(b) where any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order; or

- (c) where any relevant transfer order made under section 68 of that Ordinance is in force, the recognized exchange controller concerned or both the Securities and Futures Commission and the recognized exchange controller concerned, in accordance with the provisions of that order; (*Replaced 5 of 2002 s. 407*)

**Companies Register** (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622); (*Added 28 of 2012 ss. 912 & 920*)

**company** (公司) means—

- (a) a company formed and registered under the Companies Ordinance (Cap. 622); or
- (b) an existing company; (*Replaced 28 of 2012 ss. 912 & 920*)

**company limited by guarantee** (擔保有限公司) has the meaning given by section 9 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance; (*Added 28 of 2012 ss. 912 & 920*)

**company limited by shares** (股份有限公司) has the meaning given by section 8 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance; (*Added 28 of 2012 ss. 912 & 920*)

**company secretary** (公司秘書) includes any person occupying the position of company secretary (by whatever name called); (*Added 28 of 2012 ss. 912 & 920*)

**contributory** (分擔人) has the meaning assigned to it by section 171(1); (*Added 6 of 1984 s. 2. Amended 14 of 2016 s. 6*)

**court** (法院、法庭) means the Court of First Instance; (*Replaced 6 of 1984 s. 2. Amended 25 of 1998 s. 2*)

**creditors' voluntary winding up** (債權人自動清盤) has the meaning assigned to it by section 233(4); (*Added 6 of 1984 s. 2*)

**debenture** (債權證), in relation to a company, includes debenture stock, bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company; (*Replaced 28 of 2012 ss. 912 & 920*)

**default fine** (失責罰款) has the meaning assigned to it by section 351(1A)(d); (*Added 6 of 1984 s. 2. Amended 75 of 1993 s. 2*)

**director** (董事) includes any person occupying the position of director by whatever name called;

**document** (文件) includes summons, notice, order, and other legal process, and registers;

**existing company** (原有公司) means a company formed and registered under a former Companies Ordinance; (*Replaced 28 of 2012 ss. 912 & 920*)

**financial statements** (財務報表) means—

- (a) the annual financial statements; or
- (b) the annual consolidated financial statements, as defined by section 357(1) of the Companies Ordinance (Cap. 622); (*Added 28 of 2012 ss. 912 & 920*)

**former Companies Ordinance** (《舊有公司條例》) means—

- (a) the Companies Ordinance 1865 (1 of 1865);
- (b) the Companies Ordinance 1911 (58 of 1911); or
- (c) the pre-amended Ordinance; (*Added 28 of 2012 ss. 912 & 920*)

**founder member** (創辦成員) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622); (*Replaced 28 of 2012 ss. 912 & 920*)

**general rules** (一般規則) means general rules made under section 296 and includes forms;

**group of companies** (公司集團) means any 2 or more companies or bodies corporate one of which is the holding company of the other or others; (*Added 6 of 1984 s. 2*)

**image record** (影像紀錄) means a record produced using the imaging method and, where the context permits, includes a record in a legible form; (*Added 28 of 2003 s. 2*)

**imaging method** (影像處理方法) means a method by which documents in a legible form or in the form of microfilm are scanned by a scanner and the information recorded therein is converted into electronic images, which are then stored on electronic storage media capable of being retrieved and reproduced in a legible form; (*Added 28 of 2003 s. 2*)

**issued generally** (公開發出), in relation to a prospectus, means issued to persons who are not existing members or debenture holders of the company; (*Added 78 of 1972 s. 2*)

**limited company** (有限公司) means a company limited by guarantee or a company limited by shares; (*Added 28 of 2012 ss. 912 & 920*)

**liquidator** (清盤人) includes a provisional liquidator holding such office by virtue of section 194(1)(a) or (aa) or (1A); (*Added 46 of 2000 s. 2. Amended 14 of 2016 s. 6*)

**manager** (經理), in relation to a company, means a person who, under the immediate authority of the board of directors,



exercises managerial functions but does not include—

- (a) a receiver or manager of the property of the company; or
- (b) a special manager of the estate or business of the company appointed under section 216; (*Added 28 of 2003 s. 2*)

**member** (成員), in relation to a company, means—

- (a) a founder member of the company; or
- (b) a person who agrees to become a member of the company and whose name is entered, as a member, in the company's register of members; (*Added 28 of 2012 ss. 912 & 920*)

**members' voluntary winding up** (成員自動清盤) has the meaning assigned to it by section 233(4); (*Added 6 of 1984 s. 2*)

**non-Hong Kong company** (非香港公司) means a company incorporated outside Hong Kong that—

- (a) establishes a place of business in Hong Kong on or after the commencement date of Part 16 of the Companies Ordinance (Cap. 622); or
- (b) has established a place of business in Hong Kong before that commencement date and continues to have a place of business in Hong Kong at that commencement date; (*Replaced 28 of 2012 ss. 912 & 920*)

**officer** (高級人員), in relation to a body corporate, includes a director, manager or company secretary of the body corporate; (*Added 80 of 1974 s. 2. Amended 28 of 2012 ss. 912 & 920*)

**officer who is in default** (失責高級人員) has the meaning assigned to it by section 351(2); (*Added 6 of 1984 s. 2*)

**Official Receiver** (破產管理署署長) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6); (*Added 30 of 1999 s. 2*)

**ordinary resolution** (普通決議) has the meaning given by section 563 of the Companies Ordinance (Cap. 622); (*Added 28 of 2012 ss. 912 & 920*)

**place of business** (營業地點), in relation to a non-Hong Kong company, has the meaning given by section 774(1) of the Companies Ordinance (Cap. 622); (*Added 30 of 2004 s. 2. Amended 28 of 2012 ss. 912 & 920*)

**pre-amended Ordinance** (《修訂前的本條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date<sup>#</sup> of section 2 of Schedule 9 to

the Companies Ordinance (Cap. 622); (*Added 28 of 2012 ss. 912 & 920*)

**prescribed** (訂明), except in sections 2AB and 2AD, means as respects the provisions of this Ordinance relating to the winding-up of companies, prescribed by general rules, and as respects the other provisions of this Ordinance, prescribed by the Chief Executive in Council; (*Amended 23 of 1999 s. 3; 22 of 2023 s. 16*)

**printed** (印刷、印製) means produced by ordinary letterpress or lithography; (*Added 4 of 1963 s. 2. Amended 28 of 2012 ss. 912 & 920*)

**private company** (私人公司) has the meaning given by section 11 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance; (*Added 6 of 1984 s. 2. Amended 28 of 2012 ss. 912 & 920*)

**prospectus** (招股章程)—

- (a) subject to paragraph (b), means any prospectus, notice, circular, brochure, advertisement, or other document—
  - (i) offering any shares in or debentures of a company (including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong) to the public for subscription or purchase for cash or other consideration; or
  - (ii) calculated to invite offers by the public to subscribe for or purchase for cash or other consideration any shares in or debentures of a company (including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong);
- (b) does not include any prospectus, notice, circular, brochure, advertisement, or other document—
  - (i) to the extent that it is a publication falling within section 38B(2); or
  - (ii) to the extent that it contains or relates to an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule; (*Replaced 30 of 2004 s. 2*)

**recognized exchange company** (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap. 571) as an exchange company for operating a stock market; (*Added 5 of 2002 s. 407*)

**recognized exchange controller** (認可控制人) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Added 5 of 2002 s. 407*)

**recognized stock market** (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Added 5 of 2002 s. 407*)

**record** (紀錄) includes not only a written record but any record conveying information or instructions by any other means whatsoever; (*Added 28 of 2003 s. 2*)

**registered non-Hong Kong company** (註冊非香港公司) means a non-Hong Kong company that is registered in the Companies Register as a registered non-Hong Kong company; (*Added 28 of 2012 ss. 912 & 920*)

**Registrar** (處長) means the Registrar of Companies appointed under section 21(1) of the Companies Ordinance (Cap. 622); (*Replaced 6 of 1984 s. 2. Amended 28 of 2012 ss. 912 & 920*)

**shadow director** (幕後董事), in relation to a body corporate, means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act; (*Replaced 28 of 2012 ss. 912 & 920*)

**share** (股份)—

- (a) means a share in a company's share capital; and
- (b) if any of the company's shares is converted into stock, includes stock; (*Replaced 28 of 2012 ss. 912 & 920*)

**special resolution** (特別決議) has the meaning given by section 564 of the Companies Ordinance (Cap. 622); (*Added 28 of 2012 ss. 912 & 920*)

**specified corporation** (指明法團) means a company or a non-Hong Kong company; (*Added 30 of 2004 s. 2*)

**specified form** (指明格式), in relation to a particular provision of this Ordinance, means the appropriate form specified for the time being under section 2A or 2AB, for the purposes of that provision; (*Added 3 of 1997 s. 3. Amended 22 of 2023 s. 16*)

**specified means** (指明方式)—see section 2C; (*Added 22 of 2023 s. 55*)

**structured product** (結構性產品) has the meaning given by section 1A of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Added 8 of 2011 s. 17*)

**the minimum subscription** (最低認購額) has the meaning assigned to it by section 42(2); (*Added 6 of 1984 s. 2*)

***the time of the opening of the subscription lists*** (開立認購名單的時間) has the meaning assigned to it by section 44A(1); (Added 6 of 1984 s. 2)

***transaction at an undervalue*** (遜值交易)—see section 265E; (Added 14 of 2016 s. 6)

***unfair preference*** (不公平優惠)—see section 266A; (Added 14 of 2016 s. 6)

***unlimited company*** (無限公司) has the meaning given by section 10 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance. (Replaced 28 of 2012 ss. 912 & 920)

(Amended 1 of 1949 s. 22; 10 of 1987 s. 2; 86 of 1992 s. 2; 5 of 2002 s. 407; 30 of 2004 s. 2; 28 of 2012 ss. 912 & 920)

(2) (Repealed 28 of 2012 ss. 912 & 920)

(3) References in this Ordinance to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Hong Kong. (Added 80 of 1974 s. 2)

(4) For the purposes of this Ordinance, a company shall, subject to the provisions of subsection (6), be deemed to be a subsidiary of another company, if—

(a) that other company—

(i) controls the composition of the board of directors of the first-mentioned company; or (Amended 6 of 1984 s. 2)

(ii) controls more than half of the voting rights of the first-mentioned company; or (Amended 28 of 2012 ss. 912 & 920)

(iii) holds more than half of the issued share capital of the first-mentioned company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary. (Added 80 of 1974 s. 2)

- (5) For the purposes of subsection (4), the composition of a company's board of directors shall be deemed to be controlled by another company if that other company by the exercise of some power exercisable by it, without the consent of any other person, can appoint or remove all or a majority of the directors, and, for the purposes of this provision, that other company shall be deemed to have power to make such an appointment if— (*Amended 12 of 2005 s. 2*)
- (a) a person cannot be appointed as a director without the exercise in his favour by that other company of such a power; or
  - (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other company. (*Added 80 of 1974 s. 2*)
- (6) In determining whether one company is a subsidiary of another company—
- (a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;
  - (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
    - (i) by any person as a nominee for that other company (except where that other company is concerned only in a fiduciary capacity); or
    - (ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,shall be treated as held or exercisable by that other company;
  - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded; and
  - (d) any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other company if the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business. (*Added 80 of 1974 s. 2*)

- (7) A reference in this Ordinance to the holding company of a company shall be read as a reference to a company of which that last-mentioned company is a subsidiary. *(Added 80 of 1974 s. 2)*
- (8) In subsections (4), (5), (6) and (7) the expression **company** (公司) includes any body corporate or corporation. *(Added 4 of 1976 s. 2)*
- (8A) *(Repealed 28 of 2012 ss. 912 & 920)*
- (9) For the avoidance of doubt it is declared that a reference, in relation to any purpose of this Ordinance, to any form, matter, particular or information specified by the Registrar means, except where it is provided otherwise, specified by him for the time being for that purpose. *(Added 3 of 1997 s. 3)*
- (10) Any provision of this Ordinance that refers (in whatever words) to—
- (a) the founder members; *(Amended 30 of 2004 s. 2)*
  - (b) the members or shareholders of a company;
  - (c) a majority of members or shareholders of a company; or
  - (d) a specified number or percentage of members or shareholders of a company,
- shall, unless the context otherwise requires, apply with necessary modifications in relation to a company that has only one founder member or that has only one person as a member or shareholder, as the case may be. *(Added 28 of 2003 s. 2. Amended 30 of 2004 s. 2)*
- (11) Any provision of this Ordinance that refers (in whatever words) to—
- (a) the directors of a company;
  - (b) the board of directors of a company;
  - (c) a majority of the directors of a company; or
  - (d) a specified number or percentage of the directors of a company,
- shall, unless the context otherwise requires, apply with necessary modifications in relation to a private company that has only one director. *(Added 28 of 2003 s. 2)*

- (12) The reference to a non-Hong Kong company in the definition of *specified corporation* in subsection (1) shall, before the commencement of section 1(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), be deemed to be a reference to an oversea company as is for the time being defined under this Ordinance. (*Added 30 of 2004 s. 2 and L.N. 81 of 2005*)

*(Amended E.R. 1 of 2014)*  
*(Format changes—E.R. 1 of 2014)*  
*[cf. 1929 c. 23 s. 380 U.K.]*

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Editorial Note:

# Commencement date: 3 March 2014.

## **265. Preferential payments**

- (1) In a winding up there shall be paid in priority to all other debts

—

(a) (*Repealed 6 of 1984 s. 181*)

(b) any—

(i) payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap. 380) to any clerk or servant in respect of wages or salary or both in respect of services rendered to the company if such payment was made during a period of 4 months before the commencement of the winding up; and (*Amended 48 of 1987 s. 8*)

(ii) wages and salary (including commission provided that the amount thereof is fixed or ascertainable at the relevant date) of any clerk or servant in respect of services rendered to the company during the relevant period not exceeding, together with any payment under sub-paragraph (i), \$3,000; (*Replaced 12 of 1985 s. 29*)

(c) any—

(i) payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap. 380) to any labourer or workman in respect of wages, whether payable for time or for piece work, in respect of services rendered to the company if such payment was made during a period of 4 months before the commencement of the winding up; and (*Amended 48 of 1987 s. 8*)

- (ii) wages of any labourer or workman, whether payable for time or for piece work, in respect of services rendered to the company during the relevant period not exceeding, together with any payment under sub-paragraph (i), \$3,000; (*Replaced 12 of 1985 s. 29*)
- (ca) any severance payment payable to an employee under the Employment Ordinance (Cap. 57), not exceeding in respect of each employee \$6,000; (*Added 55 of 1974 s. 2*)
- (caa) any long service payment payable to an employee under the Employment Ordinance (Cap. 57), not exceeding in respect of each employee \$8,000; (*Added 77 of 1985 s. 2*)
- (cb) any amount due in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap. 282) accrued before the relevant date and, where the compensation is a periodical payment, the amount due in respect thereof shall be taken to be the amount of the lump sum for which the periodical payment could, if redeemable, be redeemed on an application being made for that purpose under the Employees' Compensation Ordinance (Cap. 282), but this paragraph shall not apply to any amount due in respect of compensation or liability for compensation where the company has entered into a contract with a person carrying on accident insurance business in Hong Kong in respect of its liability under the Employees' Compensation Ordinance (Cap. 282) for personal injury by accident to the employee to whom the compensation or liability for compensation is due or where the company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company; (*Added 4 of 1977 s. 2. Amended 6 of 1984 s. 259*)
- (cc) any wages in lieu of notice payable to an employee under the Employment Ordinance (Cap. 57), not exceeding in respect of each employee one month's wages or \$2,000 whichever is the lesser; (*Added 4 of 1977 s. 2*)
- (cd) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution; (*Added 6 of 1984 s. 181*)



- (ce) any payment from the Employees Compensation Assistance Fund under Part IV of the Employees Compensation Assistance Ordinance (Cap. 365) representing an amount due by the company in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap. 282) accrued before the relevant date; (*Added 54 of 1991 s. 47*)
- (cf) any amount of unpaid contribution or any amount deemed to be unpaid contribution calculated in accordance with rules made under section 73(1)(n) of the Occupational Retirement Schemes Ordinance (Cap. 426) which should have been paid by the company being wound up in accordance with the terms of an occupational retirement scheme within the meaning of that Ordinance before the commencement of the winding up:  
Provided that where such amount exceeds \$50,000 in respect of an employee, 50% of such part of the amount that exceeds \$50,000 shall not be paid in priority to all other debts under this subsection; (*Added 88 of 1992 s. 84*)
- (cg) (without prejudice to any right or liability under a trust) any amount of salaries deducted by the company being wound up from its employees' salaries for the purpose of making contributions in respect of such employees to the funds of an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (Cap. 426) which have not been paid into such funds; (*Added 88 of 1992 s. 84*)
- (ch) any amount of unpaid contribution under, or any amount of unpaid contribution calculated in accordance with, the Mandatory Provident Fund Schemes Ordinance (Cap. 485) which should have been paid by the company being wound up in accordance with the provisions of that Ordinance before the commencement of the winding up:  
Provided that where such amount exceeds \$50,000 in respect of an employee, 50% of such part of the amount that exceeds \$50,000 shall not be paid in priority to all other debts under this subsection; (*Added 80 of 1995 s. 49*)

- (ci) any amount deducted by the company being wound up from the relevant income of its relevant employees for the purpose of making contributions in respect of such relevant employees to the approved trustee of a registered scheme within the meaning of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) which have not been paid to that approved trustee; (*Added 80 of 1995 s. 49*)
- (cj) any sum and interest thereon payable to the Mandatory Provident Fund Schemes Authority under section 17(7) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (*Added 80 of 1995 s. 49*)
- (d) all statutory debts due from the company to the Government at the relevant date and which became due and payable within 12 months next before that date. (*Replaced 6 of 1984 s. 181. Amended 23 of 1999 s. 3*)
- (da) (*Repealed 30 of 1999 s. 18*)<sup>#</sup>
- (db) where the company being wound up is or was a bank and, at the commencement of the winding up, held deposits, to each depositor— (*Amended 7 of 2004 s. 55*)
  - (i) in respect of the deposits, or portion thereof, that the depositor holds in his own right, the aggregate amount so held on deposit, up to the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581), regardless of the number of deposits;
  - (ii) in respect of the deposits, or portion thereof, that the depositor holds as a bare trustee for each of the beneficiaries, the aggregate amount so held on deposit, up to, subject to subsection (5J), the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581), regardless of the number of deposits so held for the beneficiary;

- (iii) in respect of the deposits, or portion thereof, that the depositor holds in a client account for each of the clients, the aggregate amount so held on deposit, up to, subject to subsection (5J), the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581), regardless of the number of deposits so held for the client; and
  - (iv) in respect of the deposits, or portion thereof, that the depositor holds as a trustee (but not a bare trustee) under each of the trusts, the aggregate amount so held on deposit, up to the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(2) of the Deposit Protection Scheme Ordinance (Cap. 581), regardless of the number of deposits so held under the trust; (*Added 83 of 1995 s. 16. Amended 7 of 2004 s. 55; 11 of 2010 s. 14*)
- (e) where the company being wound up is an insurer, any sum payable to a person in respect of any claim (other than a claim for a refund of premium) made under or in accordance with a contract of insurance (but not a contract of reinsurance) effected by the insurer as part of its general business carried on in or from Hong Kong, unless—
- (i) such sum is, under the contract or in the ordinary course of business, payable in a place outside Hong Kong where assets of the company are maintained and under the law of that place the claim in respect of which the sum is payable is, in the event of a winding up, accorded priority with respect to those assets over claims which under the contract or in the ordinary course of business are payable at any other place; or
  - (ii) the person to whom the sum is payable is entitled with respect to the claim to claim compensation under any scheme designed to secure compensation to persons in circumstances where the insurer becomes insolvent; (*Added 79 of 1988 s. 8*)

- (ea) where the company being wound up is an insurer, any payment from the Employees Compensation Assistance Fund under Part IV of the Employees Compensation Assistance Ordinance (Cap. 365) representing a sum payable by the company to a person in respect of any claim (other than a claim for refund of premium) made under or in accordance with a contract of insurance issued for the purposes of Part IV of the Employees' Compensation Ordinance (Cap. 282) effected by the insurer as part of its general business carried on in or from Hong Kong; unless such sum is, under the contract or in the ordinary course of business, payable in a place outside Hong Kong where assets of the company are maintained and under the law of that place the claim in respect of which the sum is payable is, in the event of a winding up, accorded priority with respect to those assets over claims which under the contract or in the ordinary course of business are payable at any other place; *(Added 54 of 1991 s. 47)*
- (f) where the company being wound up is an insurer, any sum payable (after offsetting the amount of any sums owing from the claimant) to a person in respect of any claim (other than a claim for a refund of premium) made under or in accordance with a contract of reinsurance effected by the insurer, as reinsurer, as part of its general business carried on in or from Hong Kong, unless such sum is, under the contract or in the ordinary course of business, payable in a place outside Hong Kong where assets of the company are maintained and under the law of that place the claim in respect of which the sum is payable is, in the event of a winding up, accorded priority with respect to those assets over claims which under the contract or in the ordinary course of business are payable at any other place. *(Added 79 of 1988 s. 8)*
- (1A) Where the relevant date is on or after 1 June 1970 but before 1 April 1977, the sum of \$6,000 shall be deemed to be substituted in each case for the sums of \$3,000 referred to in paragraphs (b) and (c) respectively of subsection (1). *(Added 41 of 1970 s. 2. Amended 4 of 1977 s. 2)*
- (1B) Where the relevant date is on or after 1 April 1977, the sum of \$8,000 shall be deemed to be substituted in each case for the sums of \$3,000 referred to in paragraphs (b) and (c) respectively, and for the sum of \$6,000 referred to in paragraph (ca), of subsection (1). *(Added 4 of 1977 s. 2)*

- (2) Subject to subsection (1)(b) and (c), where any payment on account of wages or salary, or severance payment, or long service payment or wages in lieu of notice payable under the Employment Ordinance (Cap. 57), or accrued holiday remuneration, has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made. (*Amended 6 of 1984 s. 181; 12 of 1985 s. 29(3); 77 of 1985 s. 2*)
- (3) The debts specified in subsection (1)(b), (c), (ca), (caa), (cb), (cc), (cd), (ce), (cf), (cg), (ch), (ci) and (cj)— (*Amended 55 of 1974 s. 2; 4 of 1977 s. 2; 6 of 1984 s. 181; 77 of 1985 s. 2; 54 of 1991 s. 47; 88 of 1992 s. 84; 80 of 1995 s. 49*)
- (a) shall have priority over the debts specified in subsection (1)(d);
- (b) shall rank equally among themselves; and
- (c) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. (*Replaced 41 of 1970 s. 2*)
- (3A) The debts specified in subsection (1)(d) shall have priority over the debts specified in subsection (1)(da), (db), (e), (ea) and (f). (*Added 79 of 1988 s. 8. Amended 54 of 1991 s. 47; 10 of 1993 s. 2; 83 of 1995 s. 16*)
- (3AAA) The debts specified in subsection (1)(da) shall have priority over the debts specified in subsection (1)(db), (e), (ea) and (f). (*Added 10 of 1993 s. 2. Amended 83 of 1995 s. 16*)
- (3AAAA) The debts specified in subsection (1)(db)—
- (a) shall have priority over the debts in subsection (1)(e), (ea) and (f);
- (b) shall rank equally among themselves; and
- (c) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. (*Added 83 of 1995 s. 16*)
- (3AA) The debts specified in subsection (1)(e) and (ea)—
- (a) shall have priority over the debts specified in subsection (1)(f);

- (b) shall rank equally among themselves; and
  - (c) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. (*Added 79 of 1988 s. 8. Amended 54 of 1991 s. 47*)
- (3AB) The debts specified in subsection (1)(f)—
  - (a) shall rank equally among themselves; and
  - (b) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. (*Added 79 of 1988 s. 8*)
- (3B) The debts specified in subsection (1) shall, so far as the assets of the company available for payment of general creditors are insufficient to meet those debts, have priority over the claims of holders of debentures under any charge created as a floating charge by the company, and shall be paid accordingly out of any property comprised in or subject to the charge. (*Added 41 of 1970 s. 2. Amended 10 of 1987 s. 9*)
- (4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.
- (5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within 3 months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof. (*Amended 41 of 1970 s. 2*)
- (5A) Any money paid under a charge under subsection (5) shall be a debt due from the company to the landlord or other person having distrained, and such debt shall be discharged so far as the assets are sufficient to meet it after payment of the debts specified in subsection (1) but before payment of the other debts proved in the winding up. (*Added 41 of 1970 s. 2*)

- (5B) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the court may, on the application of the Official Receiver or the liquidator or any such creditor, make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing. *(Added 6 of 1984 s. 181)*
- (5C) Any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period. *(Added 6 of 1984 s. 181)*
- (5D) The deposits given priority under subsection (1)(db) do not include the following—
- (a) terms deposits where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
  - (b) deposits made after the date of publication of a notice in the Gazette under section 28(2)(b) of the Banking Ordinance (Cap. 155) that the company has been removed from the register and has ceased to be a bank. *(Added 83 of 1995 s. 16)*
- (5E) If—
- (a) an arrangement has been entered into or carried out on or after the specified date in relation to a deposit with the company except where the arrangement is one in pursuance of a legally enforceable obligation incurred prior to that date;
  - (b) the arrangement has, or would have had but for this subsection, the effect of enabling a person to become entitled to priority under subsection (1)(db), to which the person would otherwise not be entitled; and
  - (c) it would be concluded, having regard to—
    - (i) the manner in which, and the circumstances under which, the arrangement was entered into or carried out;
    - (ii) the form and substance of the arrangement; and

- (iii) the result in relation to the operation of this Ordinance that, but for this subsection, would have been achieved by the arrangement,

that the arrangement was entered into or carried out for the sole or dominant purpose of enabling the person, either alone or in conjunction with other persons, to become entitled to priority under subsection (1)(db), to which the person would otherwise not be entitled,

the priority given under subsection (1)(db) shall apply as if the arrangement or any part thereof had not been entered into or carried out. *(Replaced 7 of 2004 s. 55)*

- (5F) Deposits given priority under subsection (1)(db) do not include—

- (a) a deposit held for the account of the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);
- (b) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;
- (c) a deposit held by a depositor as a bare trustee for an excluded person, or in a client account for an excluded person as the depositor's client, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit; and
- (d) a deposit held by a depositor as a trustee (but not a bare trustee) for an excluded person only. *(Replaced 7 of 2004 s. 55)*

- (5G) For the purposes of subsection (5F)(b) and (c), if a deposit is held by more than one person in their own right or held for more than one person, each of those persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator. *(Added 7 of 2004 s. 55)*

- (5H) For the purposes of paragraph (db) of subsection (1)—

- (a) if the depositor referred to in subparagraph (i) of that paragraph consists of 2 or more persons—



- (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
    - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator;
  - (b) if the beneficiary or client referred to in subparagraph (ii) or (iii) of that paragraph consists of 2 or more persons—
    - (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
    - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator; and
  - (c) if the depositor referred to in subparagraph (iv) of that paragraph consists of 2 or more persons, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the trustees. *(Added 7 of 2004 s. 55)*
- (5I) If a deposit, or portion thereof, held by a depositor in a client account for a client is also held by the depositor as a trustee (whether a bare trustee or not) under a trust (whether a bare trust or not), the deposit or portion is, for the purposes of this section, taken as being held by the depositor for the client and not as such trustee. *(Added 7 of 2004 s. 55)*
- (5J) If—
  - (a) a person has more than one of the following capacities—
    - (i) a depositor holding one or more deposits, or portion thereof, in his own right;
    - (ii) a beneficiary for whom one or more deposits, or portion thereof, is or are held by a depositor as a bare trustee;

- (iii) a client for whom one or more deposits, or portion thereof, is or are held by a depositor in a client account; and
- (b) the aggregate of the amount that shall be paid in priority under subsection (1)(db)(i), (ii) or (iii) in respect of the relevant deposits or portions would, but for this subsection, have exceeded the limit on the total amount of compensation to which a person is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581),

the amount that shall be paid in priority under subsection (1)(db)(ii) or (iii) shall abate in equal proportions among themselves so that the aggregate referred to in paragraph (b) shall be that limit prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581). (*Added 7 of 2004 s. 55. Amended 11 of 2010 s. 14*)

(6) In this section—

***accrued holiday remuneration*** (累算的假日薪酬) includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Ordinance), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday, and, without limitation, includes any pay for untaken statutory holidays and pay for untaken annual leave; (*Amended 7 of 2012 s. 11*)

***arrangement*** (安排) includes an arrangement, transaction, operation or scheme whether or not such arrangement, transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings; (*Added 7 of 2004 s. 55*)

***bank*** (銀行) has the same meaning as in the Banking Ordinance (Cap. 155); (*Added 83 of 1995 s. 16*)

***bare trustee*** (被動受託人) has the same meaning as in the Deposit Protection Scheme Ordinance (Cap. 581); (*Added 7 of 2004 s. 55*)

***chief executive*** (行政總裁) has the same meaning as in the Banking Ordinance (Cap. 155); (*Added 7 of 2004 s. 55*)

***client account*** (客戶帳戶), in relation to a depositor, means an account maintained by the depositor with a bank for the purpose of holding money held by the depositor for a client of

the depositor, whether or not other money may be held in the account; (*Added 7 of 2004 s. 55*)

**controller** (控權人) has the same meaning as in the Banking Ordinance (Cap. 155); (*Added 83 of 1995 s. 16. Amended 7 of 2004 s. 55*)

**deposit** (存款) and **depositor** (存款人) have the same meaning as in the Deposit Protection Scheme Ordinance (Cap. 581); (*Added 83 of 1995 s. 16. Amended 7 of 2004 s. 55; 11 of 2010 s. 14*)

**Employees Compensation Assistance Fund** (僱員補償援助基金) means the fund established by section 7 of the Employees Compensation Assistance Ordinance (Cap. 365); (*Added 54 of 1991 s. 47*)

**excluded person** (豁除人士), in relation to a deposit maintained with the company being wound up, means—

- (a) a related company of the company;
- (b) an officer of the company being wound up or its related company on—
  - (i) the date immediately preceding the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is appointed in respect of the company being wound up under section 52 of that Ordinance; or
  - (ii) the date on which the petition for the winding up of the company being wound up is presented,whichever is the earlier;
- (c) a multilateral development bank as defined in section 2(1) of the Banking Ordinance (Cap. 155); (*Amended 19 of 2005 s. 7*)
- (d) an authorized financial institution; or
- (e) a foreign bank; (*Added 7 of 2004 s. 55*)

**foreign bank** (外地銀行) means a company that—

- (a) is incorporated outside Hong Kong;
- (b) is not an authorized financial institution; and
- (c) may, in or outside the place where it is incorporated, lawfully take deposits from the general public (whether or not on current account), or is authorized or recognized as a bank in that place; (*Added 7 of 2004 s. 55*)

**general business** (一般業務) means insurance business not being long term business as defined in section 2(1) of the Insurance Ordinance (Cap. 41); (*Added 79 of 1988 s. 8. Amended 12 of 2015 s. 100*)

**insurer** (保險人) means a person carrying on insurance business; (*Added 79 of 1988 s. 8*)

**manager** (經理) has the same meaning as in the Banking Ordinance (Cap. 155); (*Added 83 of 1995 s. 16*)

**non-excluded person** (非豁除人士) means a person who is not an excluded person; (*Added 7 of 2004 s. 55*)

**officer** (人員), in relation to a company that is an authorized financial institution, means—

- (a) a director of the company;
- (b) a chief executive of the company;
- (c) a controller of the company; or
- (d) a manager of the company; (*Added 7 of 2004 s. 55*)

**pay for untaken annual leave** (未放年假薪酬), in relation to any person, means any sum which, by virtue either of the person's contract of employment or of any enactment (including any order made or direction given under any Ordinance), is payable—

- (a) in respect of annual leave to which the person has become entitled to be allowed but which the person has not taken; or
- (b) on account of the remuneration in respect of annual leave that would have become payable to the person if the person's employment had continued until the person became entitled to be allowed the annual leave,

and, without limitation, includes any sum payable under section 41D of the Employment Ordinance (Cap. 57); (*Added 7 of 2012 s. 11*)

**pay for untaken statutory holidays** (未放法定假日薪酬) means any sum payable under the Employment Ordinance (Cap. 57) or a contract of employment in respect of a statutory holiday (within the meaning of that Ordinance) that has not been taken as a holiday (within the meaning of that Ordinance); (*Added 7 of 2012 s. 11*)

**Protection of Wages on Insolvency Fund** (破產欠薪保障基金) means the fund deemed to be established and continued in existence under section 6 of the Protection of Wages on Insolvency Ordinance (Cap. 380); (*Added 12 of 1985 s. 29(3)*)

**related company** (關連公司), in relation to a company, means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or

- (c) a subsidiary of the holding company; (*Added 7 of 2004 s. 55*)

**specified date** (指明日期), in relation to a company, means—

- (a) the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is appointed in respect of the company under section 52 of that Ordinance; or
- (b) the date on which the petition for the winding up of the company is presented,

whichever is the earlier; (*Added 7 of 2004 s. 55*)

**statutory debt** (法定債項) means a debt the liability for which and the amount of which are determined by or under any provision in any Ordinance; (*Amended 23 of 1999 s. 3*)

**the relevant date** (有關日期) means—

- (a) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
- (b) in any case where paragraph (a) does not apply, the date of the commencement of the winding up;

**the relevant period** (有關期間) means—

- (a) in a case where a company is being wound up by the court and the relevant date in the case of that company is a date other than the date of the commencement of the winding up, the period—
  - (i) beginning 4 months next before the commencement of the winding up and ending on the relevant date; or
  - (ii) beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap. 380) of any clerk or servant or labourer or workman, as the case may be, who has made an application for an ex gratia payment under section 15(1) of that Ordinance, and ending on that last day of service, (*Replaced 68 of 1996 s. 5*)

whichever is the earlier;

- (b) in any case where paragraph (a) does not apply, the period—

- (i) of 4 months next before the relevant date; or
- (ii) beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap. 380) of any clerk or servant or labourer or workman, as the case may be, who has made an application for an ex gratia payment under section 15(1) of that Ordinance, and ending on that last day of service, *(Replaced 68 of 1996 s. 5)*

whichever is the earlier; *(Replaced 48 of 1987 s. 8)*

**wages** (工資) includes, in relation to any person, any sum which, by virtue of his contract of employment, is payable to him as a Lunar New Year bonus, but does not include any accrued holiday remuneration. *(Replaced 6 of 1984 s. 181)*

*(Amended E.R. 2 of 2012)*

- (7) The Companies (Amendment) Ordinance 1984 (6 of 1984) shall not apply in the case of a winding up where the relevant date occurred before the commencement<sup>@</sup> of that Ordinance, and, in such a case, the provisions relating to preferential payments which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force. *(Added 6 of 1984 s. 181)*
- (8) The Fourth Schedule to the Protection of Wages on Insolvency Ordinance 1985 (12 of 1985) shall not apply in the case of a winding up where the date of the commencement of the winding up occurred before the commencement<sup>##</sup> of that Ordinance, and, in such case, the provisions relating to preferential payments which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force *(Added 12 of 1985 s. 29(3))*
- (9) The Companies (Amendment) (No. 3) Ordinance 1988 (79 of 1988) shall not apply in the case of a winding up where the date of the commencement of the winding up occurred before the commencement of that Ordinance, and, in such a case, the provisions relating to preferential payments which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force. *(Added 79 of 1988 s. 8)*

- (10) Section 5(a) of the Protection of Wages on Insolvency (Amendment) Ordinance 1996 (68 of 1996) (*the amending Ordinance*) shall not apply in the case of a winding up to which an application under section 15(1) of the Protection of Wages on Insolvency Ordinance (Cap. 380) relates where such application is made before the commencement † of the amending Ordinance, and in such a case, the provisions relating to preferential payments which would have applied if the amending Ordinance had not been enacted shall be deemed to remain in full force. (*Added 68 of 1996 s. 5*)
- (11) In the case of a winding up where the relevant date has occurred before the commencement †† of the Schedule to the Deposit Protection Scheme (Amendment) Ordinance 2010 (11 of 2010), that Schedule applies in relation to that winding up if the specified event within the meaning of section 22(1) of the Deposit Protection Scheme Ordinance (Cap. 581) occurs on or after the commencement of that Schedule. (*Added 11 of 2010 s. 14*)

[*cf. 1929 c. 23 s. 264 U.K.*]

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Editorial Note:

# Section 265(1)(da) was repealed by the Companies (Amendment) Ordinance 1999 (30 of 1999). Section 43 of that Ordinance provides as follows—

**“43. Savings**

Despite the repeal of sections 265(1)(da), 290A, 290B and 290E of the principal Ordinance, those sections are to continue to have effect in relation to a company that has been struck off under section 290A of the principal Ordinance as if those sections had not been repealed.”

@ Commencement date: 31 August 1984.

### Commencement date: 19 April 1985.

† Commencement date: 6 December 1996.

†† Commencement date: 1 January 2011.

## **265A. Interpretation of Subdivision 2**

- (1) For the purposes of this Subdivision, the question of whether a person is an associate of another person is to be determined in accordance with sections 265B and 265C.
- (2) In sections 265B and 265C, a provision that a person is an associate of another person means that they are associates of each other.
- (3) For the purposes of this Subdivision, a person is connected with a company if that person is—

- (a) an associate of a director or shadow director of the company; or
  - (b) an associate of the company.
- (4) For the purposes of this Subdivision, a company goes into liquidation when—
- (a) the company passes a resolution for voluntary winding up;
  - (b) a winding-up statement is delivered to the Registrar for registration under section 228A for the company; or
  - (c) (if the company has not gone into liquidation because of paragraph (a) or (b)) the court makes a winding-up order in respect of the company.
- (5) A note located in the text of this Subdivision is provided for information only and has no legislative effect.

*(Added 14 of 2016 s. 88)*



## **Sustainability and Economic Implications**

The Bill will enhance the effectiveness and efficiency of the DPS, a key component of the financial safety net. While contributions to be made by banks as Scheme members would increase as a result of the higher deposit protection limit, the proposal would enhance deposit protection, contribute to the stability and resilience of the banking and financial systems, and align with relevant international standards, thereby strengthening the status of Hong Kong as an international financial centre.