



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

By email <dps_review@dps.org.hk> and by post

21 October 2009

Our Ref.: C/RIF, M66227

Hong Kong Deposit Protection Board
78/F., Two International Finance Centre
8 Finance Street
Central, Hong Kong
(Reference: DPS Review – 2nd Phase)

Dear Sirs,

[Consultation Paper on Strengthening the Operation of the Deposit Protection Scheme](#)

--- Please find attached in the Appendix the comments of the Hong Kong Institute of Certified Public Accountants on the recommendations set out in the above-referenced consultation paper.

If you have any questions on our submission or wish to discuss it further, please contact me at the Institute on 2287 7084.

Yours faithfully,

A handwritten signature in black ink that reads 'Peter Tisman'.

Peter Tisman
Director, Specialist Practices

PMT/ML/ay
Encl.

Comments from Hong Kong Institute of CPAs in response to the Consultation Paper on Strengthening the Operation of the Deposit Protection Scheme (“DPS”)

A. Recommendations on processes for determining compensation

1. It is recommended that members of the Board outside Hong Kong be allowed to participate in Board meetings through electronic means.

It is noted from the consultation paper that the Hong Kong Deposit Protection Board (“the Board”) may need to make highly time-critical decisions in certain circumstances, in particular in organising and implementing a payout.

The reference in paragraph 15 of the consultation paper to “overseas members” is ambiguous. Paragraph 14, meanwhile, refers only to members who are “absent from Hong Kong at the time [of the meeting]”. It should be clarified whether the intention is only to allow members who may be temporarily absent from Hong Kong to participate in, and count towards the quorum of, a meeting of the Board or, in addition, to provide for the appointment of non-Hong Kong resident members. If it is the former, we agree that, in order to facilitate the Board’s decision-making process, the DPS Ordinance (“DPSO”) should be amended to allow members of the Board temporarily outside Hong Kong to participate in Board meetings through electronic means. However, for the sake of good governance, all Board members, both in and out of Hong Kong, should be provided with all the materials for the meeting. If, on the other hand, the purpose is also to provide for the appointment of non-Hong Kong resident members, this should be explained further.

2. It is recommended that the Board be given the power to determine the amount of accrued interest on a deposit or customer liability if the Board considers there is uncertainty over the amount of accrued interest, or that the time required to ascertain the amount in accordance with the DPSO would be so long as to unduly delay the payment of compensation.

We agree with the recommendation.

3. It is recommended that the Board be given the power to determine the value of an annuity, or future or contingent liability of a depositor, if the Board considers there is uncertainty over the value, or that the time required to ascertain the value according to the DPSO would be so long as to unduly delay the payment of compensation.

We agree with the recommendation.

4. It is recommended that the power of the Board to make interim payments to depositors by class and determine the amount of payment for each class be articulated more clearly in the DPSO.

While we note that the Board may be able to manage the payout process more cost effectively and efficiently by paying different classes of depositor different amounts of interim payment, to avoid challenges on the grounds of unfair treatment in giving differential treatment to different depositors, it would be prudent not to provide the Board with an unfettered discretion in this regard. There should be suitable checks and balances on the Board’s authority in exercising such a power and/or criteria should be established as to when and how this power may be exercised.

B. Recommendations on representation arrangements

5. It is recommended that Scheme members be required to make negative disclosures and obtain customer acknowledgments on a transaction basis, except for automatic rollovers.

In order to enable depositors have a clearer understanding of the protection status of their deposits, in particular where deposits are not protected under the DPS, we agree Scheme members should be required to make negative disclosures and obtain customer acknowledgments before a new transaction in a non-protected deposit is conducted, except for automatic rollovers which do not require further interactions between the Scheme members and their customers.

6. It is recommended that Scheme members be required to make positive disclosures on the protection status of their deposits. Disclosures for deposits covered by an account can be made on an account basis. For deposits not covered by an account, the disclosures have to be made on a transaction basis. For existing accounts or deposits, a one-off disclosure should be made.

We agree with the proposed positive disclosure arrangements. However, the implementation of such arrangements should not obviate the need for Scheme members to respond to customers' specific requests for confirmation as to the protection status of their deposits.

7. It is recommended that Scheme members be obliged to respond to depositors' requests for positive disclosure within a specified time frame and in a specified manner.

We agree Scheme members should be required to adhere to certain reasonable minimum standards in responding to depositors' requests for positive disclosure.

8. It is recommended that the positive and negative disclosures made by Scheme members be required to meet certain standards in terms of size and location to ensure they are sufficiently prominent and easily identifiable by depositors.

We agree with the recommendation.

9. It is recommended that Scheme members be prohibited to call financial products not meeting the definition of structured deposit in the DPSO a structured deposit.

We remain open-minded as to whether restrictions should be imposed on the use of the term "structured deposit", which could lead to requests by the DPS in future for the use of other descriptive terms commonly used by banks to be similarly restricted. In our view, it is more important that Scheme members should be required to provide a prominent "health warning", in all circumstances, to make it abundantly clear to customers whether a particular deposit is or is not protected under the DPS, and there should be effective monitoring and enforcement of the same.