HONG KONG MONETARY AUTHORITY
香港金融管理局

Circulars

16 Oct 2008

Guideline on Representation on Deposit Protection of Financial Products

16 October 2008

The Chief Executive
All Restricted Licence Banks and Deposit-Taking Companies

Dear Sir/Madam,

Guideline on Representation on Deposit Protection of Financial Products

I am writing to request your institution to comply with the standards applicable to Restricted Licence Banks (RLBs) and Deposit-Taking Companies (DTCs) on making disclosures in respect of whether their deposit products are covered by the deposit guarantee offered by the Hong Kong Government's Exchange Fund.

BACKGROUND

The Financial Secretary announced on 14 October 2008 the use of the Exchange Fund to guarantee the repayment of all customer deposits held with all Authorized Institutions in Hong Kong following the principles of the existing Deposit Protection Scheme (DPS), but including RLBs and DTCs as well as Licensed Banks. The guarantee applies to both Hong Kong dollar and foreign currency deposits with Authorized Institutions in Hong Kong, including those held with Hong Kong branches of overseas institutions. It covers the amount of deposits in excess of that protected under the DPS. The guarantee will remain in force until the end of 2010, when a decision will be taken in the light of international financial conditions on whether it should be extended.

PROTECTION STATUS OF FINANCIAL PRODUCTS

Deposits eligible for protection under the deposit guarantee announced by the Financial Secretary are identical to those covered by the DPS. The definition of "protected deposits" in the context of the DPS is stipulated in section 2 of the Deposit Protection Scheme Ordinance (DPS Ordinance) and Schedule 1 to the DPS Ordinance sets out the deposits not protected. An extract of the relevant legislation is attached at Annex.

Generally speaking, deposits denominated in any currency, including ordinary deposits such as current accounts, savings accounts, and time deposits with a maturity not exceeding five years, are protected under the new measure. Financial products other than deposits are not

covered. For example, investment products such as bonds, stocks, warrants, mutual funds, unit trusts and insurance policies, are not protected. In addition, certain types of deposits are specifically carved out from the protection under the DPS, such as time deposits with a maturity longer than five years, structured deposits (such as foreign exchange linked and equity linked deposits), secured deposits, bearer instruments (such as bearer certificates of deposit) and offshore deposits. Furthermore, deposits held by certain types of depositors are not protected. These depositors include banks and persons connected to an Authorized Institution such as its related companies and senior management.

All RLBs and DTCs should immediately ascertain whether deposit products offered by them fall within the definition of protected deposits in the DPS Ordinance. In case of doubt, legal opinion should be sought to clarity the protection status.

DISCLOSURE REQUIREMENTS

In order to assist members of the public to distinguish between protected and non-protected financial products, so that they can make an informed decision in selecting financial products suitable for them, RLBs and DTCs should immediately adopt the following procedures to inform their customers whether a financial product offered by them is protected by the deposit guarantee:

- Where a financial product is not a protected deposit in the form of a bearer instrument but was described as a deposit in any advertisement, promotional material or document, whether published by electronic, telecommunications or other means, the institution (being a RLB or a DTC) should include in the bearer certificate a statement that the financial product is not a protected deposit and is not protected by the Hong Kong Government's Exchange Fund or the DPS.
- Where a financial product offered by an institution is not a protected deposit but was described as a deposit in any advertisement, promotional material or document, whether published by electronic, telecommunications or other means, the institution should, before a person opens an account with the institution for the purpose of the financial product or invests in the financial product, notify the person that the financial product is not a protected deposit and is not protected by the Hong Kong Government's Exchange Fund or the DPS.
- Where (i) any term or condition under which a deposit is maintained is varied to the effect that a deposit is no longer a protected deposit; or (ii) any right or obligation of the person or institution in relation to the deposit is varied, in connection with the provision by the institution to the person of a service, or of a credit facility secured by the deposit, to the effect that a deposit is no longer a protected deposit, the institution should, before effecting such a variation to the deposit, notify the person that on the variation, the deposit is no longer a protected deposit and is no longer protected by the Hong Kong Government's Exchange Fund or the DPS.
- In respect of a financial product whose protection status is yet to be ascertained by the institution but was described as a deposit in any advertisement, promotional material or document, whether published by electronic, telecommunications or other means, the institution should, before a person opens an account with the institution for the purpose of the financial product or invests in the financial product, notify the person that the financial product may not be a protected deposit and may not be protected by the Hong Kong Government's Exchange Fund or the DPS.

- The notice given in the above circumstances is required to be accompanied by a request to the person to acknowledge, before he invests in the financial product, that he has received and understands the notice.
- If a person refuses to give an acknowledgement that he has received and understands the disclosure on the protection status of a financial product, the institution is expected to refuse opening the account or completing the transaction with the person. Proper record keeping of the person's refusal to give an acknowledgement is not a sufficient justification for continuing to complete the transaction with the person.
- The notice and the acknowledgement should be made in writing as far as practicable. Should the notice and the acknowledgement is made in any other means, the institution should keep proper record of the notice and acknowledgement.
- The protection status of all financial products offered by an institution should be ascertained on or before 16 November 2008. For a financial product the protection status of which was uncertain when a person opened an account with the institution for the purpose of the financial product or invested in the financial product, the institution should, as soon as the protection status of the financial product is ascertained, immediately notify the person in case the financial product is not a protected deposit. The notice should be made in writing as far as practicable.

If you have any questions, please do not hesitate to contact Ms Eve Law at 2878 1197 or Ms Tess Leung at 2878 8280.

Yours faithfully,

(Colin Pou)
for Monetary Authority

Encl. Annex (Word file, 40KB)

Last revision date : 01 August 2011