Enhancements to the Deposit Protection Scheme

Consultation Paper

Financial Services and the Treasury Bureau
Hong Kong Monetary Authority

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Foreword

1. This consultation paper is jointly issued by the Financial Services and the Treasury Bureau (FSTB) and the Hong Kong Monetary Authority (HKMA) to consult on proposals for enhancing the operation of Deposit Protection Scheme (DPS), to achieve a faster and more effective payout for depositors in case the DPS is triggered during a bank failure or crisis.

2. After considering views and comments received, we shall refine the proposals for implementation.

3. Submissions should be made on or before 12 December 2014 in writing by any one of the following means:

   By mail to: Enhancements to Deposit Protection Scheme Consultation
   Hong Kong Monetary Authority
   55/F, Two International Finance Centre
   8 Finance Street
   Central, Hong Kong

   By fax to: (852) 2290 5168

   By email to: cedps@hkma.gov.hk

4. Any person submitting comments on behalf of any organisation is requested to provide information of the organisation that he or she represents.

5. Submissions will be received on the basis that the FSTB, the HKMA, or other Government or statutory agencies may freely reproduce, quote or publish them, in whole or in part, in any form; and may use, adapt or develop any suggestions put forward for purposes directly related to this consultation, without seeking permission from the contributing party.

6. The names of the contributing parties and their affiliation(s) may be referred to in other documents published and disseminated by various means by the authorities or other relevant agencies. If any contributing parties do not wish their names or affiliations to be disclosed, they should state so when making the submissions.

7. Any personal data provided will only be used for purposes directly related to this consultation. Such data may be transferred to other Government departments or statutory agencies for the same purposes. For access to or correction of personal data contained in your submissions, please contact:

   Personal Data Privacy Officer
   Hong Kong Monetary Authority
   55/F, Two International Finance Centre
   8 Finance Street
   Central, Hong Kong

8. Terms used in this consultation paper are used in a generic sense to reflect the concepts underpinning the proposals in question, unless the context otherwise provides. When the relevant proposals are implemented in the form of legislation in future, it is possible that these terms may be modified or replaced in order to better reflect precisely the policy intent of the proposals in the law as well as the legal interpretation of such terms when used in the law.

Abbreviations

CWUMPO	Companies (Winding Up and Miscellaneous Provisions) Ordinance
DPS	Deposit Protection Scheme
DPSO	Deposit Protection Scheme Ordinance
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
FSTB	Financial Services and the Treasury Bureau
HKDPB	Hong Kong Deposit Protection Board
HKMA	Hong Kong Monetary Authority
PLD	Date of appointment of provisional liquidator
QD	Quantification date
Scheme members	Member banks to the DPS
TD	Trigger date of the DPS
WOD	Winding-up order date

1 Executive Summary

1.1 The DPS is established under the Deposit Protection Scheme Ordinance (DPSO) to provide protection to depositors and contribute to general banking stability by reducing the risks of bank runs and potential contagion during a banking crisis. It commenced operation in 2006. A Deposit Protection Scheme Fund (DPS Fund) is being built up through collecting contributions from Scheme members, which comprise all licensed banks unless otherwise exempted by the Hong Kong Deposit Protection Board (HKDPB). The protection limit of the DPS was originally HK$100,000. A review of the DPS was conducted in 2009 after the global financial crisis to determine whether the scope and level of protection of the DPS needed to be enhanced in line with international developments and to ensure a smooth exit from the full deposit guarantee introduced as a temporary pre-emptive measure. As a result of the review, the protection limit was raised to HK$500,000 which now provides full coverage to 90% of depositors. The DPS Fund currently has a fund size of about HK$2.1 billion.

1.2 The recent global financial crisis demonstrated the importance of sufficiently robust deposit protection as part of the financial safety net system. By protecting depositors and maintaining confidence, effective deposit protection helps prevent bank runs and potential contagion from bank failures, thus contributing to financial stability. The challenges encountered during the crisis by some overseas economies have led international standard setters and deposit insurers to focus on crisis management resulting in substantive reforms and the issuance of comprehensive guidance to strengthen the ability of the financial system to deal with failures of complex financial institutions. A key focus in deposit insurance has been the development of capacity to make prompt payout, which is now widely recognised as necessary to reassure depositors.

1.3 This consultation paper mainly sets out proposals for increasing the speed of payout, including—

- Adoption of the "gross payout" method to determine DPS compensation (i.e. depositors will be compensated an amount up to the DPS protection limit, without the need to go through any netting process of their liabilities to the same bank to determine the DPS compensation at the time of the payout);

- Enhancement of the payout process by providing more certainty for the determination of the "Quantification Date" (QD) in the DPSO to facilitate deposit compensation determination; and

- Enabling the use of electronic communication channels by the HKDPB, in addition to the traditional way of paper communication, to notify affected depositors of the compensation and related arrangements in case the DPS is triggered.

After the proposed enhancements are implemented, it is expected that depositors will have quicker access to their deposit compensation payments when the DPS is triggered during a bank failure or crisis. This will enhance the effectiveness of the DPS as part of the financial safety net whose function is to help prevent financial crises and contribute to financial stability.

1.4 The implications for funding by the industry have been considered since the adequacy of financial resources (including back-up funding) is important to finance a payout. After reviewing the estimated cost of the DPS generated from an updated statistical model taking into account various factors including the likelihood of bank failures, the magnitude of possible losses and safeguards for recovery of compensation cost[1], we believe the existing target fund size at 0.25% of Relevant Deposits[2] (translated to approximately HK$4.1 billion based on the current total protected deposits at HK$1.6 trillion) does not need to be altered as it is sufficient to cover potential compensation payment under a gross payout scenario. Therefore, the current proposals do not entail any fundamental changes to the funding requirement or structure of the DPS Fund.

1.5 We last consulted the public on the protection limit and membership of the DPS in 2009 and the consultation conclusions thereon remain valid. We shall keep under review developments in these areas.

Next Steps

1.6 The proposals set out in this consultation paper are open for public consultation until 12 December 2014. Subject to the comments received, we shall proceed to amend the law for implementing the proposals.

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1 There are well established mechanisms under the DPSO to minimise the potential costs that may be borne by the DPS, for example the asset maintenance requirement and indemnity for obtaining early recovery of compensation paid out of the assets of the failed bank.

2 In general, "Relevant Deposits" is a reference figure under the DPSO to allow for a more precise calculation of the amount of protected deposits up to the DPS protection limit of HK$500,000 after allowing for aggregation of deposit balances and netting effect.

2 Overview

2.1 The DPS is established by the DPSO to safeguard the interests of depositors in the event of failure of a DPS member bank (Scheme member)[3]. It is operated by the HKDPB, a statutory body established under the same Ordinance. The prevailing compensation limit is HK$500,000 per depositor per Scheme member. In general, most forms of deposits, including deposits denominated in Hong Kong dollars and other currencies[4] and deposits by individuals and non-bank companies and other entities are covered. However, structured deposits, offshore deposits, bearer form deposits and time deposits with an original term to maturity longer than 5 years are not covered by the DPS. The DPS is able to provide full protection to 90% of depositors. According to the latest survey conducted by HKDPB, public awareness of the DPS protection limit is high, at over 75%. The DPS is funded by contributions from Scheme members without subsidy from the Government. At present, the DPS fund stands at HK$2.1 billion. The existing target fund size is 0.25% of total protected deposits[5]. A back-up liquidity facility has been secured from the Exchange Fund to provide liquidity to enable a fast payout in the event that the DPS is triggered.

2.2 Since its establishment in 2006, the DPS has not been triggered. Nevertheless, its role in building an effective financial safety net to contribute to depositor confidence and general banking stability was affirmed during the 2008 global financial crisis. It is the objective of the DPS to payout depositors as soon as practicable and, where the time required to make compensation payments to depositors would cause delay, an interim payment[6] can be made within two weeks from the bank failure. After a payout, the HKDPB will subrogate to the rights of depositors to preferential payment under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWUMPO)[7] when claiming the compensation paid to depositors, from the liquidator of the failed bank.

2.3 In the context of strengthening deposit protection as an effective component in the financial safety net system, lessons learnt from the global financial crisis resulted in more comprehensive guidance from international policy makers on the design and features of deposit insurance schemes to achieve operational

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3 Under the DPSO, all licensed banks are required to join the DPS unless exempted.

4 According to section 34 of the DPSO, compensation payable shall be paid in Hong Kong dollars regardless of the currency in which the protected deposit concerned is denominated.

5 Translated to approximately HK$4.1 billion based on the current total protected deposits of HK$1.6 trillion. The target fund size will automatically adjust with reference to the size of total protected deposits.

6 Section 36 of the DPSO provides that the HKDPB may make an interim payment of compensation to depositors, as the HKDPB considers appropriate, if the DPS is triggered and there is uncertainty as to the entire amount of compensation payable to the depositor, or the time required to ascertain the entire amount of compensation payable to the depositor would be so long as to unduly delay the compensation payments to depositors.

7 With the commencement of operation of the new Companies Ordinance (Cap 622) on 3 March 2014, the old Companies Ordinance (Cap 32) is retitled CWUMPO with the core provisions affecting the operation of companies repealed except those relating to prospectuses, winding-up, insolvencies of companies and disqualification of directors.

effectiveness and to maintain financial stability. For example, in June 2009 the Basel Committee on Banking Supervision and the International Association of Deposit Insurers jointly issued the *Core Principles for Effective Deposit Insurance Systems*[8] *(Core Principles).* These set out guidelines for jurisdictions to consider in establishing or reforming deposit insurance systems so as to contribute effectively to the maintenance of depositor confidence and financial stability. In 2011 the Financial Stability Board (FSB)[9] included the Core Principles in the list of key standards for sound financial systems that deserve priority implementation. The Basel III Liquidity Coverage Ratio rules (2013)[10] also specify the existence of an effective DPS as a factor in considering banks' liquidity profiles.

2.4 To contribute to a safer and sounder financial system and mitigate the impact of future crises, deposit insurers around the world have undertaken various reforms over the past few years. This has resulted in more robust deposit insurance schemes to better safeguard the interests of depositors. Some of these overseas reforms have been implemented alongside other crisis management or resolution measures to strengthen financial safety nets. Notable enhancements can be seen in the areas of payout efficiency and funding mechanism in Europe, the United Kingdom and some Asian countries. According to the peer review on deposit insurance systems completed by the FSB in 2012[11], the crisis resulted in greater convergence in practices across jurisdictions and an emerging consensus about appropriate design features.

2.5 While Hong Kong has weathered the global financial crisis relatively well, the deposit insurer in Hong Kong, namely the HKDPB, performed a comprehensive assessment of the DPS against the Core Principles to identify potential areas for improvements and conducted a focused review of various potential enhancement measures. The HKDPB has been implementing some of these measures to facilitate a swifter payout, including establishing an early warning system with the HKMA, requiring speedier and more complete information submission by banks and building up greater system processing capacity. Nevertheless, the existing compensation determination mechanism which is based on set-off arrangements, poses a major impediment to shortening the timeframe for making compensation payments to depositors. The set-off requirements require all liabilities owed by a depositor to a failed bank to be netted off from his/her aggregate balance of deposits when determining the amount of deposit compensation. In contrast, gross payout enables deposit compensation to be

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8 See the document available at http://www.bis.org/publ/bcbs156.pdf

9 The Financial Stability Board ("FSB"), established by the Group of Twenty, is a leading international forum for the promotion of financial stability and financial regulatory reforms. Since the global financial crisis, the FSB has advocated and led major international financial regulatory reforms to enhance financial stability. As an international financial centre, Hong Kong is a member jurisdiction of the FSB, and is actively pursuing reforms proposed by FSB to contribute to the global financial stability.

10 See the document available at http://www.bis.org/publ/bcbs238.pdf

11 See the peer review report at https://www.financialstabilityboard.org/publications/r_120208.pdf

made without netting off of liabilities, up to the DPS protection limit of HK$500,000 per depositor per Scheme member. The netting off requirement is time-consuming and is a major hurdle to achieving a speedy payout, which is one of the essential elements for maintaining depositor confidence during a banking crisis. The HKDPB has therefore considered that the Government should review the present arrangement, and is in favour of the proposal of adopting a gross payout to enable the HKDPB to discharge its function of making compensation to depositors, when the DPS is triggered, in a swifter and more effective manner.

2.6 The possibility of adopting gross payout was considered in a consultation in April 2009 but the proposal was not pursued at that time because international reform in this area was still evolving and the general payout timeframe of the DPS was then largely comparable to its peers. However, in the years since the crisis, a trend has emerged for more FSB member jurisdictions to adopt directly or change from a net payout to a gross payout basis to speed up the payout process (e.g. the United Kingdom, the Netherlands, Singapore and Australia). As a result of this and other enhancements, the average target time for payouts by these deposit insurers has been materially shortened from an average of two to three months before the crisis to less than one month at present, with plans for further reduction. At present, if the DPS is triggered, the HKDPB will target to make an interim payment of compensation to affected depositors within two weeks and settle the remaining payments in six weeks depending on the complexity of the failed bank's operation. We are of the view that there is scope to shorten this payout time to minimise the inconvenience to affected depositors and to better meet public expectation.

2.7 In 2013 the Financial Sector Assessment Program (FSAP) led by the International Monetary Fund completed a review of the crisis management and bank resolution framework in Hong Kong[12]. The review covered the functioning of the DPS in contributing to financial stability, taking into account the provisions of the Core Principles. The FSAP review concluded that the DPS in Hong Kong contains many good features, and that it is transparent and trusted. It also recommended Hong Kong to consider, among other things, changing the present rule of netting in compensation determination to achieve swifter payout.

2.8 Taking into account the recent reforms undertaken by overseas deposit insurers and the FSAP recommendation, proposals relating to the compensation determination approach (including gross payout and other technical amendments) have been studied and are considered in this consultation exercise.

[12] See the document available at http://www.imf.org/external/pubs/ft/scr/2014/cr14130.pdf

3 Gross Payout

3.1 The DPS currently calculates the amount of compensation payment to depositors on a net basis, which requires liabilities owed by a depositor to a failed bank such as debts (e.g. overdrafts, personal loans, mortgages, credit cards, trade financing loans) and contingent liabilities (e.g. letters of guarantee and FX options related exposures) to be set-off against protected deposits held by an individual or a corporate depositor with the failed bank. The existing full netting payout approach was originally designed to mirror Hong Kong's insolvency regime so that the DPS would be entitled to claim the compensation paid to depositors from the liquidation of a failed bank on the same basis, thereby reducing potential losses to the DPS.

3.2 Application of the full netting approach in determining compensation payments to each depositor is time-consuming and complicated due to the efforts required to identify and ascertain the value of all liabilities owed by a depositor to the bank. Determination of the payout amount is particularly complex if a depositor has multiple loan and deposit positions with the bank, holds derivative contracts, has interconnected relationships with other depositors or borrowers (e.g. cross guarantees between different depositors and borrowers belonging to a business group) or is known to have any outstanding debt with overseas branches of the failed bank. Notwithstanding the implementation of various enhancements to streamline the payout process by the HKDPB, such as strengthening the mechanism for the submission of depositor information of a failed Scheme member to HKDPB and upgrading the IT system capability of the HKDPB, the existing full netting requirement presents challenges to the DPS in meeting depositors' expectations of an efficient and effective payout during a bank failure or crisis.

3.3 To remove this major impediment to swift depositor reimbursement, it is necessary to simplify the current basis for determining compensation payouts by removing the need to set-off liabilities against protected deposits held by depositors, i.e. to adopt a gross basis up to the DPS protection limit (currently at HK$500,000). The value of any deposits of a depositor over the DPS protection limit will still be subject to set-off in liquidation in accordance with the insolvency rules. In other words, a depositor holding an aggregate amount of deposits above the DPS protection limit would receive a payout calculated on a gross basis for the deposits up to the limit but would still be subject to set-off of liabilities in respect of amounts above the limit. With regard to cost recovery by the HKDPB after the compensation payment, the HKDPB is currently entitled to a preferential payment under section 265(1)(db) of the CWUMPO (see the relevant provisions in the CWUMPO in **Annex 2** for reference) by subrogating to depositors' rights and remedies after the compensation payment. Hence, a consequential change will be required to dis-apply set-off in the recovery of compensation paid by the DPS to enable the HKDPB to recover the full amount of compensation from the liquidator after adopting the gross approach for payout.

3.4 Together with the enhancements already implemented and mentioned in paragraph 2.5, the HKDPB estimates that the proposed gross payout approach will enable the DPS to make full compensation payments to depositors, ideally within 7 days[13]. This would be a significant improvement compared with the prevailing target of making interim payments within 2 weeks under most circumstances and possibly taking up to 6 weeks for final payments depending on the complexity of the operations of the failed bank.

3.5 In addition to faster payout, which would benefit depositors in general, calculating compensation payments on a gross basis would provide more ready access to liquid funds up to the DPS protection limit for depositors whose deposits would have been partially or fully set-off by their liabilities to the Scheme member under the current net approach. We hope this will reduce the incentive for depositors to withdraw deposits from banks due to concern or misunderstanding of the potential impact of set-off on deposits on which they may rely for day-to-day subsistence or other more immediate purposes. Another major advantage of using the gross basis is that it is easier for depositors to understand the scope of DPS protection both during normal times and during a bank failure, helping promote depositor confidence in the effectiveness of the DPS. Depositors who would receive smaller or no payments under the net payout approach should be less inclined to withdraw their deposits during a bank failure if payouts are to be made on a gross basis.

3.6 In addition to depositors, Scheme members are expected to also benefit from the gross payout approach. The gross approach will streamline data management by dispensing with depositor liabilities type data maintained by banks to facilitate payouts and thus help lower IT costs. With a more efficient and effective DPS, banks may be entitled to a lower run-off rate when determining the Liquidity Coverage Ratio under Basel III[14].

3.7 Under the existing insolvency regime in Hong Kong, depositors are entitled to preferential status under the section 265(1)(db) of the CWUMPO in the event of a winding-up of a bank and they rank ahead of the claims of other unsecured creditors. After a payout, the HKDPB will take on the claims of depositors up to the compensation amount paid to them under the DPS and subrogate to the rights of the depositors in liquidation. If the gross payout approach is adopted, the basis for both the compensation determination under the DPSO and the recovery of compensation paid by the DPS under the CWUMPO have to be aligned, to ensure the HKDPB's entitlement to claim for the equivalent sum as paid to affected depositors in the liquidation of the Scheme member. This is the approach taken

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[13] Some deposit accounts in trust nature or held for clients or with incomplete depositor information may however require more time to be reimbursed.

[14] For calculating the Liquidity Coverage Ratio for retail deposits, stable deposits that are fully insured by an effective deposit insurance scheme characterised by an ability to make prompt payouts, clearly defined coverage and high public awareness can apply a run-off factor of 5%. The run-off factor can be further reduced to 3% if additional criteria are met (e.g. the scheme is pre-funded and access to insureddeposits by depositors is within 7 business days after the deposit insurance scheme is triggered).

by other deposit insurance systems that have adopted gross payout (e.g. the UK and Singapore) or are in the course of doing so (e.g. the EU). Application of a gross approach in both compensation payment and recovery from liquidation is necessary to preserve HKDPB's ability to claim from the liquidator the full amount of any compensation paid to depositors.

3.8 The impact on the insolvency regime in Hong Kong is expected to be limited. First, the creditor hierarchy under the liquidation regime in the CWUMPO would remain unchanged. Secondly, it is proposed that set-off be disapplied up to the protection limit of the DPS, i.e. any portion of protected deposits above HK$500,000 would continue to be subject to set-off against liabilities in liquidation proceedings. It should be emphasised that the gross payout approach does not extinguish a depositor's obligation to repay his liabilities. The depositor is still obliged to repay any outstanding balance of his debt to the failed bank (or its liquidator) after receiving deposit compensation from the DPS.

3.9 To illustrate by a very simple example, a depositor might have HK$1 million in deposits and a HK$1 million unsecured loan with a failed Scheme member. Under the current set-off approach, if the Scheme member failed, this depositor would receive no payout from the DPS but would have no residual debt. Under the proposed gross approach, the same depositor would receive a DPS payout of HK$500,000 (the current DPS limit) and an amount of HK$500,000 remaining deposits to be claimed in liquidation, and would still owe the bank HK$1 million. On liquidation, the remaining HK$500,000 in deposits (i.e. the portion above the DPS limit) would be set-off against the loan and the depositor would still be required to repay the outstanding HK$500,000. The depositor's overall financial position would essentially be the same under both approaches. But under the set-off approach, he or she would be left with no funds to help meet day-to-day expenses. Under the proposed approach, the depositor would receive HK$500,000 from the DPS to help meet living expenses, while continuing to service the original loan following the bank failure. **Annex 1** gives more detail of a comparison of the effect on depositors and liquidated assets under the current set-off approach and the proposed gross approach.

3.10 It would be unreasonable for the HKDPB to bridge any funding gap without being subrogated to the full extent of the compensation payment to depositors from the liquidated assets. Although there may be a possibility that some depositors as illustrated in the example above might default on the remaining HK$500,000 loan, statistics collected from major retail banks show that the average difference between the total amounts of protected deposits calculated under the gross approach and net approach is not more than 10%, indicating that most deposits are unencumbered and therefore not subject to set-off. In addition, charge off rates for bank in Hong Kong (an indicator of problem assets) have been very low, typically less than 1% of total assets, taking into account periods of financial stress in Hong Kong such as the 1998 Asian financial crisis, the 2003 SARS period and the 2008 global financial crisis. As a result, the potential reduction in liquidated assets to be recovered by the liquidator for distribution to creditors under the gross approach would be marginal. It is also not expected that there would be a surge in the cost of the liquidator in bank recovery action.

3.11 From the perspective of maintaining financial stability, the social and economic benefits for general depositors that would result from speedier payout after the adoption of the gross approach and the increased confidence towards general banking stability are considered to outweigh any potential additional costs to unsecured creditors ranking after depositors with preferential treatment under the insolvency regime. This is because the ability to make prompt payout without a complicated calculation and verification process is essential to enable a credible and effective DPS to enhance its functions in the financial safety net, and to reduce the risks of bank runs in stress situations.

3.12 The proposal to adopt a gross basis for determining compensation is consistent with the trend in the reforms undertaken by other major overseas deposit insurers in order to speed up payouts. The FSB peer review report noted that more jurisdictions had replaced set-off arrangements by gross payout mechanisms in the aftermath of the crisis, reflecting both depositors' concerns about exposure to mandatory set-off and deposit insurers' efforts to expedite the payout process. Currently, 13 major jurisdictions out of 24 FSB member jurisdictions are adopting gross payout[15].

3.13 As regards the implications for the funding contributions of Scheme members to the DPS, contribution payable by a Scheme member is dependent on the amount of Relevant Deposits maintained by the Scheme member and the supervisory rating assigned to it by the banking regulator. Taking into account the results of a recent validation of the DPS funding model, the current size of the DPS Fund at 0.25% of the total Relevant Deposits is still generally sufficient to cover potential losses to the DPS Fund after adopting gross payout[16]. Therefore, no adjustment to the level of premium rates[17] currently applicable to Scheme members is proposed. That said, since the size of protected deposits will increase somewhat when calculated on a gross basis, the total amount of contribution payable by Scheme members will also increase. The impact on contributions payable by individual Scheme members will however vary, depending on the amount of Relevant Deposits held with the Scheme member and the deposit and liability profile of its depositors, as well as the extent of netting currently applied by the Scheme member in the contribution calculation.

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15 These include Argentina, Australia, Brazil, Canada, France, Japan, Mexico, the Netherlands, Singapore, Spain, Switzerland, Turkey and the UK. Following the recent issuance of the revised Directive on Deposit Guarantee Schemes by the EU in April 2014, it is expected that more countries, including Germany and Italy, will also move to gross payout.

16 An external consultant was engaged by the HKMA to review the funding cost implications of adopting gross payout. Taking into account the latest default probabilities of banks, expected loss given default and other factors (e.g. finance cost, shortfall risk and recovery period from payout to reimbursement from liquidated assets), the existing fund size is still valid at a confidence level of 99.94%.

17 In accordance with Schedule 4 to the DPSO, the build-up premium and expected loss premium payable by a Scheme member range from 0.0175% to 0.049% and from 0.0075% to 0.02%, respectively, and are divided into four tiers corresponding to the supervisory rating assigned to the Scheme member.

3.14 In order to allow the implementation of the gross payout approach as proposed, i.e. the set-off rules will not be applied to both the determination of compensation to which a depositor is entitled under the DPSO and to claims by the HKDPB on the liquidator of the failed Scheme member following a payout, the DPSO will need to be amended. The proposed amendments aim to enable the HKDPB to recover any compensation payments made to depositors in full from the liquidator, without deductions arising from the rules of set-off, on the basis that the disapplication of the rule of set-off up to the DPS protection limit does not in any way prejudice the liquidator's claim against depositors for any liabilities owed to the bank in liquidation. The specific amendments, subject to further examination of relevant legal implications, include the following —

(a) Section 27 of the DPSO (see the relevant provisions in the DPSO in **Annex 2** for reference) will be amended to remove all references to set-off and netting of liabilities for determining the entitlement to compensation of a depositor. The definition of "specified amount" in section 27(3) of the DPSO will also be amended to clarify that it means the total sum (as opposed to the aggregate amount of protected deposits in excess of the aggregate amount of liabilities) held by a failed Scheme member for a depositor in respect of protected deposits, including the interest accrued on the protected deposits calculated up to and including the quantification date;

(b) The DPSO or the CWUMPO will be amended to provide that the mandatory insolvency set-off will be dis-applied up to the DPS protection limit in respect of the HKDPB's subrogation to the rights of a depositor's priority under section 265(1)(db) of the CWUMPO; and

(c) The definition of "amount of relevant deposits" in Schedule 4 to the DPSO (see the relevant provisions in the DPSO in **Annex 2** for reference) will also need to be amended to enable the HKDPB to collect contributions from Scheme members on a gross basis. This means that when calculating the amount of relevant deposits, any liabilities owed by a depositor to the Scheme member will not be deducted from the amount of all relevant deposits held by the depositor with the Scheme member.

Question 1

Do you agree that it is appropriate to adopt the proposed gross payout approach to enable rapid compensation by the DPS? If not, what other approaches are recommended to reduce hurdles to DPS compensation determination arising from the set-off requirements so as to ensure a fast payout?

4 Quantification Date

4.1 The DPS compensation covers both the principal balance and interest accrued on deposits. Where deposits are denominated in foreign currencies, the compensation payable to depositors will be converted into Hong Kong dollars. Pursuant to section 27 of the DPSO (see the relevant provisions in the DPSO in **Annex 2** for reference), the amount of interest accrued on protected deposits and the conversion of foreign currency deposits into Hong Kong dollars are determined with reference to the QD. That is, interest will be accrued up to the QD and the exchange rate used to convert a foreign currency deposit is the market exchange rate on the QD.

4.2 Under section 25 of the DPSO (see the relevant provisions in the DPSO in **Annex 2** for reference), the QD is the date of appointment of a provisional liquidator (PLD) in respect of the failed Scheme member unless the HKDPB specifies the QD as the DPS trigger date (TD)[18], i.e. the date on which the Monetary Authority serves a notice on the HKDPB to trigger the DPS, provided that the HKDPB —

(a) has knowledge that a provisional liquidator will not be appointed;

(b) is of the opinion that it is uncertain whether a provisional liquidator will be appointed; or

(c) is of the opinion that an appointment of a provisional liquidator will take so long as to unduly delay the payment of compensation to the depositors of the Scheme member by the HKDPB.

The reason for this is to align with the reference date used in determination of compensation recovery by the DPS under the insolvency regime so that shortfall loss arising from differences between compensation paid by the DPS and the corresponding reimbursement from liquidation would be minimised.

4.3 Owing to the administrative and legal processes for appointing the provisional liquidator, the appointment could take a week or two after the TD based on a past incident. This is an impediment to the target timeframe of making payments within 7 days. Although section 25(2) of DPSO provides a power for the HKDPB to specify the QD as the TD under certain conditions, it is not practical for the HKDPB to make use of the above-mentioned power under the DPSO to determine compensation based on the TD within the target timeframe of making a payout. This is because scenarios (a) and (b), referred to in paragraph 4.2 above, are not common in bank failure situations; and the HKDPB may not be in a position to form the opinion under scenario (c) in the aforesaid paragraph shortly upon the triggering of a payout and if it did, it could still be subject to challenge.

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[18] TD refers to the date when a winding-up order has been made by the Court in respect of the failed bank, or the Monetary Authority serves a notice on the HKDPB to trigger the DPS, whichever is the earlier. It is possible that the PLD could be one to two weeks after the TD.

4.4 To remove those uncertainties on the reference date used for compensation payment determination so as to enable full payment to be made to depositors in an expeditious manner, it is proposed that the specific QD, in relation to a failed Scheme member, be defined to be the TD or the PLD[19], whichever is the earlier. This will provide the HKDPB with the necessary certainty to determine the compensation amount so that full compensation could be made to the vast majority of depositors, ideally, in 7 days in most cases of bank failure after adoption of the gross payout approach. With the amendment of the QD as proposed, the existing provision for the HKDPB to make a specification of the QD under section 25 of the DPSO can be repealed. It can also remove the possible uncertainty arising from the discretion of the HKDPB to withdraw the specification of QD pursuant to section 25(3) of the DPSO, which can be confusing to depositors and may delay the compensation calculation process due to the re-calculation of entitlement of depositors.

4.5 The existing rights of entitlement of depositors, i.e. depositors' rights to claim any amount in excess of the compensation under the DPS, and other creditors, will be unaffected, and hence no changes to the insolvency regime are required.

4.6 After making compensation to depositors in a payout, the HKDPB would subrogate to the depositors' rights and recover the payment from the liquidation proceedings of the failed Scheme member. Given that claim adjudication in liquidation would be determined using a reference date which might be different from the QD used by the HKDPB for determining compensation payment, there are chances that the HKDPB would incur additional shortfall loss, mainly in situations of unfavourable exchange rate movement subsequent to the QD. It should be noted that such risk also exists in the existing DPS compensation regime and thus the proposed amendment will not further aggravate the relevant risk exposure.

4.7 Based on the above, we propose that, subject to further examination of relevant legal implications, section 25 of the DPSO be amended as below to minimise the potential risk to a fast payout process arising from uncertainty of the QD. Specifically, the definition of QD in section 25 of the DPSO can be revised to mean —

(a) the date of the specified event (i.e. DPS Trigger) in relation to the Scheme member; or

(b) the date of appointment of a provisional liquidator in respect of the Scheme member, whichever is the earlier.

Section 25(2) and (3) of the DPSO relating to the powers of the HKDPB to specify or withdraw the specification of QD will no longer be relevant after the above amendment and can therefore be deleted.

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[19] In the consultation document on Improvement of Corporate Insolvency Law Legislative Proposals (April 2013) issued by the Government, there is a proposal to clarify that the date of winding up order (WOD) will be the relevant date on which the deposit balances of depositors of the bank are deemed to have been proved where the Official Receiver or the liquidator does not require formal proof of debts. We will continue to monitor reforms on that front, and will adopt the reference to WOD in place of PLD in the proposal to amend the DPSO as appropriate.

4.8 Correspondingly, a minor amendment to section 38(1) of the DPSO (see the relevant provisions in the DPSO in **Annex 2** for reference) in respect of any accrued interest entitled to subrogation by the HKDPB may also be introduced to remove the reference to section 25(1)(a) of the DPSO for consistency with the amended section 25 of the DPSO.

Question 2

Do you agree that we should remove the uncertainties in the reference date (i.e. QD) for determination of compensation payment by amending the definition of QD as the date of TD and PLD, whichever is earlier? If not, are there any other alternatives to the use of TD and PLD which may help address the same issue?

5 Electronic Notices

5.1 The HKDPB is required to inform depositors of the compensation entitlement as determined by the HKDPB and other relevant details as soon as practicable. This notification to depositors has to be made individually in writing under section 32(7) of the DPSO (see the relevant provisions in the DPSO in **Annex 2** for reference). To fulfil the legal requirement in respect of written notice, the HKDPB would send a written payment notice appended with a paper cheque for the amount of the depositor's entitled payment by post.

5.2 With the increasing use of electronic banking services, alternative payment channels (e.g. through electronic means) capable of supporting speedier payment to depositors were studied. The key benefit of employing electronic channels would be to enable the delivery of compensation details and effect the payments to a vast number of depositors within a relatively short period of time when compared to the present paper-form notification. While the time that could be reduced would be no more than a few days, this would be critical in achieving the targeted payout timeframe of a week or so. In order to cope with this potential enhancement for making swifter payout, it is recommended to introduce flexibility to empower the HKDPB to give notice to depositors in electronic form before effecting the compensation payment.

5.3 Specifically, we propose that the HKDPB will be permitted to send notice to a depositor on compensation decision by any electronic means it considers appropriate having regard to the circumstances of the depositor and satisfying itself that a notice sent by such electronic means will reasonably come to the attention of that depositor. The present channel for written notice will be retained to cater for the needs of the depositors who do not use electronic communication channels. Depositors will not be required to elect whether to receive the notice in written or electronic form. Upon implementation, the HKDPB will carefully assess the reliability and completeness of a depositor's record with the failed bank before deciding the suitability of issuing electronic notice to him. Security measures and technological safeguards will be put in place to protect the data privacy of depositors. After the disbursement of compensation payments, a written notice will continue to be sent to depositors receiving electronic notice in the first instance for better record keeping.

5.4 As the HKDPB only requires Scheme members to provide electronic contact of depositors maintained by them, the operational and compliance burden on them is marginal.

5.5 To grant the flexibility of using electronic notice to the HKDPB, we propose that, subject to further examination of relevant legal implications, section 32 of the DPSO be amended to the effect that any notices required to be sent to a depositor by the HKDPB under section 32(7) of the DPSO may be sent by any

electronic means the HKDPB considers appropriate. In exercising its discretion to notify a depositor by any electronic means, we propose that the HKDPB should have regard to the circumstances of the depositor and should satisfy itself that a notice sent by the electronic means will reasonably come to the attention of that depositor.

Question 3

Do you agree that we should enable the HKDPB to have the flexibility of using electronic notice, in addition to paper notice, to handle the payout process more effectively? Do you have any other suggestions on the use of electronic notice to communicate with depositors?

6 Conclusion

6.1 This consultation paper proposes enhancements to the DPS, mainly through adoption of gross payout, with a view to improving the effectiveness of the scheme in protecting depositors and contributing to financial stability. Hong Kong's high standing as an international financial centre depends in part on the robustness of its response system in dealing with banking crisis. As a component of the safety net, a DPS capable of making fast payout can complement other resolution measures to equip Hong Kong with the necessary crisis management toolkits.

6.2 The implementation of the proposals would benefit depositors by providing them with quicker access to their funds and, in turn, would reduce the potential contagion risk to other banks during a crisis. Moreover, a simplified payout approach is more readily understood and thus would increase depositors' confidence in the available protection and the banking system at large.

6.3 We recognise that the proposed enhancements would lead to a marginally higher annual contribution payable by the banking industry, albeit the magnitude would vary among individual Scheme members. This increase in contribution could however be partly offset by the lesser IT and compliance costs incurred by banks because the data maintenance and reporting requirements under the gross approach would be simpler than those under the net approach. The liquidity compliance costs of banks could also be potentially lowered with a more efficient and effective DPS.

6.4 As the proposed gross payout would not alter the depositor preference hierarchy, it is not expected to have a material impact on the insolvency regime or the rights of other creditors. Moreover, the dis-application of set-off against deposits would only be up to the DPS protection limit (i.e. HK$500,000) and would not extinguish the obligation of a depositor to repay any outstanding debt to the failed bank. Hence, the liquidator can continue to apply the insolvency set-off to deposits above HK$500,000 and other assets held by the depositor with the failed bank. Taking into account the above and the low historical write-off ratios, the resultant impact of gross payout on other bank creditors should be contained.

6.5 The other two items for consultation, i.e. the determination of the QD and the use of electronic notices, are also proposals aimed to enable more efficient payout processes. It is expected that, together with the gross payout approach, they will bring benefits to the general depositors and hence promote banking stability.

6.6 Alongside the consultation on the enhancement proposals in this exercise, the HKDPB is continually reviewing operational processes and implementing various measures to facilitate a swifter payout. These include the established early warning system with the HKMA to enable preparatory work to be undertaken in advance of a trigger, the tightened requirements on the quality of depositor information and speed of submission of the data by banks backed by regular reviews by HKDPB, as well as building up greater system processing capacity and a dynamic resource pool for handling a payout.

6.7 We will consider the comments received carefully and, subject to the outcome of the consultation, prepare the legislative amendments to take forward the proposals.

Comparison of Effect on Depositors and Other General Creditors

The proposed gross payout approach proposes to remove the need to set-off liabilities against protected deposits held by depositors up to the DPS protection limit (currently at HK$500,000). It will not amend the creditor hierarchy under the liquidation approach and hence strictly adheres to the present preferential claims entitled by depositors which would be subrogated to the DPS upon compensation payment. From a technical point of view, it does not change the total value of deposits realisable by a depositor before distribution to other creditors ranking after them, but simply enables the depositors to access their deposits prior to set-off against liabilities through receiving payouts by the DPS. As a result, the dis-application of set-off up to the DPS protection limit under the proposed approach will not increase the total "non-*pari passu*"[1] benefit to a depositor. There would only be transfers between the two categories of "non-*pari passu*" claims (namely, the insolvency set-off and preferential claim). For illustration, please see the table below for comparing the effect on depositors and other creditors under the present and the proposed approach.

[1] In liquidation, unsecured creditors should be paid pari passu without discrimination. In this context, insolvency set-off of deposits against liabilities and preferential claims available to depositors are benefits enjoyed by depositors as exceptions to the *pari passu* principle.

	Depositor A (Deposit < Loan) Deposit: HK$1 mn Loan: HK$2 mn		**Depositor B (Deposit > Loan)** Deposit: HK$2 mn Loan: HK$1 mn		**Depositor C (Deposit = Loan)** Deposit: HK$1 mn Loan: HK$1 mn	
	Existing Approach	**Proposed Approach**	**Existing Approach**	**Proposed Approach**	**Existing Approach**	**Proposed Approach**
Impact on the Depositor						
DPS compensation to the depositor (X)	$0	$0.5mn	$0.5mn	$0.5mn	$0	$0.5mn
Set-off benefit to the depositor (Y)	$1mn	$0.5mn	$1mn	$1mn	$1mn	$0.5mn
Total non-*pari passu* benefit to the depositor (represented by DPS compensation / preferential claim plus set-off benefit) (X+Y)	$1mn	$1mn	$1.5mn	$1.5mn	$1mn	$1mn
Effect on *non-pari passu* benefit to the depositor	No change		No change		No change	
Impact on Liquidated Assets						
Remaining assets (outstanding loan) recoverable by the bank / liquidator for distribution to creditors (represented by total outstanding loan of the depositor minus set-off benefit to the depositor) (Loan — Y)	$1mn	$1.5mn*	$0	$0	$0	$0.5mn*
Amount owed by the bank / liquidator to the depositor as unsecured debt	$0	$0	$0.5mn	$0.5mn	$0	$0

* The distribution of liquidated assets is made in accordance with the creditor hierarchy under the liquidation regime in the CWUMPO where the preferential claims entitled by depositors would be subrogated to the DPS.

Remarks: There can be a couple of scenarios, mainly with amount of deposits and loans less than the DPS protection limit of HK$500,000, that can be further derived. But since the impact on the benefit to the depositor and assets recoverable for distribution is similar to the scenarios set out in the table above, they are not further illustrated to avoid unnecessarily complicating the picture.

Excerpts from Chapter 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance

Section:	265	**Preferential payments**	E.R. 2 of 2012	02/08/2012

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

(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)

Excerpts from Chapter 581 Deposit Protection Scheme Ordinance

Section:	25	**Quantification date**	L.N. 110 of 2006	25/09/2006

(1) In this Part, "quantification date" (截算日), in relation to a Scheme member, means—

(a) in the case where a specification is made under subsection (2) and has not been withdrawn under subsection (3), the date of the specified event in relation to the Scheme member;

(b) in any other case, the date of appointment of a provisional liquidator in respect of the Scheme member.

(2) If a specified event has occurred in relation to a Scheme member, and the Board—

(a) has knowledge that a provisional liquidator will not be appointed;

(b) is of the opinion that it is uncertain whether a provisional liquidator will be appointed; or

(c) is of the opinion that an appointment of a provisional liquidator will take so long as to unduly delay the payment of compensation to the depositors of the Scheme member by the Board,

the Board may make a specification for the purposes of subsection (1) that the quantification date, in relation to the Scheme member, means the date of the specified event in relation to the Scheme member.

(3) The Board may withdraw a specification made under subsection (2) if a provisional liquidator is appointed in respect of the Scheme member after the specification is made.

Section:	27	**Entitlement to compensation: general**	11 of 2010	01/01/2011

(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 $500000, 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 $500000, 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 amount by which the aggregate amount, as at the date of the specified event, of the protected deposits in respect of which the person is so entitled exceeds the aggregate amount, as at that date, of the liabilities of the person to the failed Scheme member in respect of which—

(a) in the case of the date of the specified event within the meaning of section 22(1)(b)(i), a right of set off exists in the winding up of the failed Scheme member;

(b) in the case of the date of the specified event within the meaning of section 22(1)(b)(ii), a right of set off would have existed in the winding up of the failed Scheme member had a winding-up order been made in respect of it on that date,

plus or minus, as the case may be, the interest accrued on the deposits, or the liabilities, calculated up to and including the quantification date.

(4) For the purposes of subsection (3)—

(a) if any protected deposit or liabilities are not denominated in Hong Kong dollars, the deposit or liabilities shall 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;

(b) in determining the amount of liabilities of the person to the failed Scheme member, the same rules shall apply, subject to paragraph (c), with regard to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, as if the failed Scheme member were a person so adjudged;

(c) the Board may determine the value of annuities and future and contingent liabilities by making an estimate that is reasonable and appropriate in the circumstances of the case if the Board considers that —

(i) there is uncertainty as to the value of the annuities and future and contingent liabilities;

(ii) the time required to ascertain the value of the annuities and future and contingent liabilities 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 value of the annuities and future and contingent liabilities would, having regard to the likely difference between the ascertained value and the estimated value of the annuities and future and contingent liabilities, outweigh the benefits of making the calculation; and (Added 11 of 2010 s. 4)

(d) the Board may determine the amount of interest accrued on deposits, or liabilities, by making an estimate that is reasonable and appropriate in the circumstances of the case if the Board considers that—

(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)

Section:	32	**Board's duties and powers on occurrence of specified event**	L.N. 110 of 2006	25/09/2006

(1) If a specified event has occurred in relation to a Scheme member—

(a) the Board shall as soon as practicable after the occurrence inform the depositors of the Scheme member by notice published in any daily newspaper in circulation in Hong Kong, or by other means the Board considers appropriate, of the occurrence; and

(b) the Board—

(i) may, for the purpose of performing its functions, require a depositor, or each depositor of a class of depositors, of the Scheme member to supply the Board with information and documents in support of the entitlement of the depositor or other persons to compensation under Division 2; and

(ii) shall thereupon inform the depositors concerned by notice published in any daily newspaper in circulation in Hong Kong, or by other means the Board considers appropriate, of the requirement.

(2) If a specified event has occurred in relation to a Scheme member—

(a) the Board, or a person appointed as an agent of the Board or authorized by the Board under this Ordinance, may, for the purpose of the performance by the Board of its functions under this Ordinance, have access to the premises and records of the Scheme member; and

(b) every director, chief executive, manager, employee or agent of the Scheme member, the liquidator or provisional liquidator of the Scheme member, or any person in possession of the records of the Scheme member, shall, subject to subsection (3)—

(i) afford the Board, or a person appointed as an agent of the Board or authorized by the Board under this Ordinance, access to those records; and

(ii) provide such assistance to the Board, or such a person so appointed or authorized, as the Board or person may require for the exercise of the power under paragraph (a).

(3) The Board shall not require the disclosure by a solicitor or counsel of any privileged communication, whether oral or written, made to or by him in that capacity.

(4) Any person who, without reasonable excuse, contravenes subsection (2)(b) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(5) If a specified event has occurred in relation to a Scheme member, the Board shall decide in accordance with this Ordinance—

(a) whether a depositor of the Scheme member or any other person is entitled, in respect of the depositor's protected deposit with the Scheme member, to compensation under Division 2; and

(b) if he is, the amount of compensation to which he is entitled under Division 2.

(6) In making a decision under subsection (5), the Board may rely on the records obtained from the Scheme member except to the extent of any manifest error that appears on the face of those records.

(7) The Board shall as soon as practicable after a decision has been made under subsection (5)—

(a) notify the depositor of its decision in writing; and

(b) if applicable, pay the compensation, subject to section 35, to the depositor from the Fund.

Section:	38	**Subrogation**	L.N. 163 of 2013	03/03/2014

(1) If the Board makes a payment of compensation to a depositor of a Scheme member from the Fund—

(a) subject to subsection (2), the Board is, notwithstanding any rule of law, subrogated, to the extent of the net amount of that payment and, where the amount of that payment is

calculated on the basis of a quantification date within the meaning of section 25(1)(a), any interest, calculated in accordance with subsection (5), accrued on the net amount of that payment, to all the rights and remedies of the depositor in relation to all his deposits, whether or not protected 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 of the depositor in relation to those deposits; and

(b) until the Board has been reimbursed in full the net amount of that payment and any interest accrued on that net amount in accordance with this section, the depositor, or any person who is subrogated, whether or not before the Board's subrogation, to the rights and remedies of the depositor in relation to those deposits, 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.

Schedule:	4	**CONTRIBUTIONS TO FUND**	11 of 2010	01/01/2011

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 by which the amount of all relevant deposits held by one person, as a depositor, with the Scheme member in that person's own right exceeds the amount of relevant liabilities owed by the person to the Scheme member (if any), up to a limit of $500000;

(b) the amount by which the amount of all relevant deposits held by a depositor, as a bare trustee under one bare trust, with the Scheme member exceeds the amount of relevant liabilities owed by the depositor, as the bare trustee under that bare trust, to the Scheme member (if any), up to a limit of $500000;

(c) the amount by which the amount of all relevant deposits held by a depositor with the Scheme member in one client account exceeds the amount of relevant liabilities owed by the depositor to the Scheme member under that client account (if any), up to a limit of $500000; or

(d) the amount by which the amount of all relevant deposits held by a depositor, as a trustee under one trust, with the Scheme member exceeds the amount of relevant liabilities owed by the depositor, as the trustee under that trust, to the Scheme member (if any), up to a limit of $500000; (Replaced 11 of 2010 s. 13)