



## CONSULTATION PAPER

### ENHANCING DEPOSIT PROTECTION UNDER THE DEPOSIT PROTECTION SCHEME

The Law Society has the following comments on the recommendations set out in the Consultation Paper:-

#### **1. Recommendation on Protection Limit**

*It is recommended that the protection limit of the DPS be increased from the current HK\$100,000 to HK\$500,000, instead of HK\$200,000 as indicated by the consultant in the HKMA consultancy report.*

*It is recommended that the level of priority claims for depositors under the CO be adjusted to link it to the DPS protection limit. Without this adjustment, an increase in the protection limit will be cost-prohibitive.*

**The Law Society endorses the recommendations.**

#### **2. Recommendation on Compensation Calculation Basis**

*The Board does not recommend changing the netting approach (full netting) applicable to the DPS for the time being. However, international developments should be monitored and the subject should be kept under review.*

**The Law Society endorses the recommendation.**

The Law Society notes the publication of a European Consultation Paper regarding a review of Directive 94/19/EC on Deposit-Guarantee Scheme dated 29 May 2009 and anticipates the HKDPB will consider whether developments in other jurisdictions could be adopted to protect the stability of the Hong Kong banking system ([http://ec.europa.eu/internal\\_market/consultations/docs/2009/deposit\\_guarantee\\_schemes/consultation\\_dgs\\_2009\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2009/deposit_guarantee_schemes/consultation_dgs_2009_en.pdf))

#### **3. Recommendations on Product Coverage**

*It is recommended that secured deposits which fall outside the present definition of "deposit" under the BO because they are referable to the provision of banking and financial services be brought under the protection of the DPS by revising the definition of "deposit" in the DPSO.*

*It is recommended that the definition of "deposit" for the priority claims for depositors under the CO be brought in line with the revised definition of deposit in the DPSO.*

*The Board does not recommend bringing structured deposits under the protection of the DPS.*

**The Law Society endorses the recommendations.**

#### **4. Recommendation on Types of Institution Covered**

*The Board does not recommend extending the coverage of the DPS to deposits held in restricted licence banks and deposit-taking companies.*

##### **Law Society's comment:**

In respect of the recommendation not to extend the coverage of the DPS to deposits held in restricted licence banks ("RLBs") and deposit-taking companies ("DTCs"), it might be helpful if the Hong Kong Deposit Protection Board ("HKDPB") carried out a cost/benefit analysis to determine the appropriate course to take.

Depending on the cost/benefit analysis, there may be a benefit in extending the DPS protective regime to RLBs and DTCs - so that all authorised institutions would fall within the scope of the DPS. The concern is that if, for example, a DTC fails, the way in which this is reported may lead investors to believe that a "bank" has failed and the DPS is not protecting depositors. It may well be that in such a case the media would not be particularly careful in making the distinction between licensed banks, RLBs and DTCs.

#### **5. Recommendations on Funding Arrangements**

*It is recommended that Scheme members be offered an option to report protected deposits for contribution assessment purposes on a net deposit basis to the extent that they see appropriate.*

*It is recommended that the target fund size of the DPS Fund be adjusted from the current 0.3% to 0.25% of total protected deposits.*

**The Law Society endorses the recommendations.**

*It is recommended that the annual contribution by Scheme members be maintained largely at the current level in absolute terms. This will mean the contribution rates for collecting build-up levies from Scheme members are to be reduced by half.*

**The Law Society has no objections to maintaining the contribution in absolute terms.**

**The Law Society of Hong Kong**  
**Company and Financial Law Committee**  
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