

**《2015 年存款保障計劃（修訂）  
條例草案》**

**Deposit Protection Scheme  
(Amendment) Bill 2015**

# Deposit Protection Scheme (Amendment) Bill 2015

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# A BILL

## To

Amend the Deposit Protection Scheme Ordinance to adopt a gross payout approach to determine the amount of compensation payable to a depositor and to recover the amount of compensation paid; to revise the definition of *quantification date*; to enable the Board to notify affected depositors by electronic means; and to make consequential and minor technical amendments.

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Deposit Protection Scheme (Amendment) Ordinance 2015.

**2. Deposit Protection Scheme Ordinance amended**

The Deposit Protection Scheme Ordinance (Cap. 581) is amended as set out in sections 3 to 11.

**3. Section 25 substituted**

Section 25—

**Repeal the section**

**Substitute**

**“25. Quantification date**

In this Part—

***quantification date*** (截算日), in relation to a Scheme member, means the date on which the specified event occurred in relation to the Scheme member under section 22(1).”.

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

(1) Section 27—

**Repeal subsection (3)****Substitute**

“(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.”.

(2) Section 27(4)(a)—

**Repeal**

“or liabilities are not”

**Substitute**

“is not”.

(3) Section 27(4)(a)—

**Repeal**

“or liabilities shall”

**Substitute**

“is to”.

- (4) Section 27(4)(a), after “Board;”—

**Add**

“and”.

- (5) Section 27(4)—

**Repeal paragraphs (b) and (c).**

- (6) Section 27(4)(d)—

**Repeal**

“, or liabilities,”.

**5. Section 32 amended (Board’s duties and powers on occurrence of specified event)**

- (1) After section 32(7)—

**Add**

“(7A) Subject to subsection (7B), the Board may comply with subsection (7)(a) by issuing the notice to the depositor in hard copy form or in electronic form.

(7B) The Board must—

- (a) have regard to the matters the Board considers relevant in the circumstances in deciding whether to issue to the depositor a notice in hard copy form or in electronic form; and
- (b) take reasonable steps to satisfy itself that a notice in electronic form will come to the attention of the depositor.”.

- (2) Section 32(8), Chinese text, definition of *經理*—

**Repeal the full stop**

**Substitute a semicolon.**

- (3) Section 32(8)—

**Add in alphabetical order**

“*in electronic form* (電子形式) means in the form of an electronic record, being a record generated in digital form by an information system, which can be—

- (a) transmitted within an information system or from one information system to another; and
- (b) stored in an information system or other medium;

*in hard copy form* (印本形式) means in a paper form or similar form capable of being read;”.

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

Section 35(b)—

**Repeal**

“27(4)(c) or (d)”

**Substitute**

“27(4)(d)”.

**7. Section 37 amended (recovery of payment by Board)**

Section 37(5)—

**Repeal**

“27(4)(c) or (d)”

**Substitute**

“27(4)(d)”.

**8. Section 38 amended (subrogation)**

(1) Section 38(1)—

**Repeal paragraph (a)**

**Substitute**

- “(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”.

- (2) Section 38(1)(b)—

**Repeal**

“net amount of that payment and any interest accrued on that net amount in accordance with this section”

**Substitute**

“aggregate amount”.

- (3) Section 38(1)(b)—

**Repeal**

“of the depositor in relation to those deposits”

**Substitute**

“mentioned in paragraph (a)(i)”.

- (4) After section 38(1)—

**Add**

- “(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.
- (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).
- (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.”.

(5) Section 38(5)—

**Repeal**

“subsection (1)(a)”

**Substitute**

“this section”.

(6) Section 38(5)(c)—

**Repeal**

“net amount of that payment and the interest accrued on that net amount in accordance with this section”



**Substitute**

“aggregate amount”.

- (7) After section 38(6)—

**Add**

“(6A) This section applies to all the depositor’s deposits with the Scheme member, whether or not they are protected deposits.”.

- (8) Section 38—

**Repeal subsection (7)****Substitute**

“(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).”.

**9. Section 48 amended (power of Board to obtain information)**

- (1) Section 48(2)(a), after “member;”—

**Add**

“and”.

- (2) Section 48(2)—

**Repeal paragraph (b).**

(3) Section 48(2)(c)—

**Repeal**

“and liabilities (if any)”.

**10. Section 57 added**

After section 56—

**Add**

**“57. Transitional provisions in relation to Deposit Protection Scheme (Amendment) Ordinance 2015**

(1) In this section—

*commencement date* (生效日期) means the date of commencement of the Deposit Protection Scheme (Amendment) Ordinance 2015 ( of 2015);

*former 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 former Ordinance applies to all matters arising from, in relation to, or as a consequence of, a specified event that has occurred before the commencement date.

(3) The provisions of the former Ordinance specified in subsection (4) continue to apply—

(a) for determining the amount of build-up levy payable by a Scheme member under section 3(5) of Schedule 4 for the year of 2016; and

(b) for calculating the amount of contribution payable by a new Scheme member under section 6(1) of that Schedule for the year of 2016.

- (4) The provisions of the former Ordinance specified for the purposes of subsection (3) are—
  - (a) section 48(2);
  - (b) the definition of *amount of relevant deposits* in section 1(1) of Schedule 4; and
  - (c) section 1(2) of that Schedule.”.

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

- (1) Schedule 4—

### **Repeal**

“& 54]”

### **Substitute**

“, 54 & 57]”.

- (2) Schedule 4, section 1(1), definition of *amount of relevant deposits*—

### **Repeal**

“the amount by which” (wherever appearing).

- (3) Schedule 4, section 1(1), definition of *amount of relevant deposits*, paragraph (a)—

### **Repeal**

“exceeds the amount of relevant liabilities owed by the person to the Scheme member (if any)”.

- (4) Schedule 4, section 1(1), definition of *amount of relevant deposits*, paragraph (b)—

### **Repeal**

“exceeds the amount of relevant liabilities owed by the depositor, as the bare trustee under that bare trust, to the Scheme member (if any)”.

- (5) Schedule 4, section 1(1), definition of *amount of relevant deposits*, paragraph (c)—

**Repeal**

“exceeds the amount of relevant liabilities owed by the depositor to the Scheme member under that client account (if any)”.

- (6) Schedule 4, section 1(1), definition of *amount of relevant deposits*, paragraph (d)—

**Repeal**

“exceeds the amount of relevant liabilities owed by the depositor, as the trustee under that trust, to the Scheme member (if any)”.

- (7) Schedule 4, section 1(2)(b)(ii), after “partnership;”—

**Add**

“and”.

- (8) Schedule 4, section 1(2)(c)—

**Repeal the semicolon**

**Substitute a full stop.**

- (9) Schedule 4, section 1(2)—

**Repeal paragraphs (d), (e) and (f).**

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## Explanatory Memorandum

The main object of this Bill is to amend the Deposit Protection Scheme Ordinance (Cap. 581) (*Ordinance*) to enhance the Deposit Protection Scheme by adopting a gross payout approach in determining the amount of compensation payable to depositors and in recovering the amount of compensation paid. The Bill also proposes to revise the definition of *quantification date* and to enable the Hong Kong Deposit Protection Board (*Board*) to issue electronic notices to affected depositors.

2. Clause 1 sets out the short title.
3. Clause 3 amends section 25 of the Ordinance to revise the definition of *quantification date* to mean the date of the specified event.
4. Clause 4 amends section 27 of the Ordinance so that, in determining the amount of compensation to which a person is entitled from the Deposit Protection Scheme Fund, liabilities owed by the person to the failed Scheme member are not taken into account.
5. Clause 5 amends section 32 of the Ordinance to enable the Board to issue electronic notices to affected depositors.
6. Clause 8 adds section 38(1A), (1B) and (1C) to the Ordinance to provide for the amount recoverable by the Board from, or out of the assets of, the Scheme member under the gross payout approach. The Board is entitled to recover any net amount of compensation payment made to the depositor and any interest accrued on that amount. For that purpose, any law

relating to, or right or obligation with regard to, set off is disappplied. Clause 8 also adds section 38(6A) to the Ordinance to provide that section 38 applies to all the depositor's deposits with the Scheme member.

7. Clauses 6, 7, 8, 9 and 11 contain consequential amendments to sections 35, 37, 38 and 48 of, and Schedule 4 to, the Ordinance respectively.
8. Clauses 4 and 8 contain minor technical amendments.
9. Clause 10 adds section 57 to the Ordinance to provide for transitional matters.