



8 April 2006

Your Ref: B9/62/2C
Our Ref.: C/IPC, M40561

Mr. Raymond Chan
Division Head
Banking Development Department
Hong Kong Monetary Authority
55th Floor, Two International Finance Centre
8 Finance Street
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Dear Mr. Chan,

Deposit Protection Scheme (Asset Maintenance) Rules

Thank you for your letter dated 14 March 2006 addressed to the chairman of the Institute's Insolvency Practitioners Committee ("IPC") requesting comments on the draft Deposit Protection Scheme (Asset Maintenance) Rules ("Rules"). The comments of the IPC are set out below.

Clause 3

The reason for the apparently non-sequential numbering in sub-clause (1), i.e., (a), (aa), (b), is not clear given that is a new set of rules and not an amendment to existing rules.

Sub-clause (4) is open-ended and the basis on which the Monetary Authority ("MA") may exercise his discretion is not clear in the Rules. This could give rise to uncertainty.

Clause 4

Under clause 4 of the Rules, the amount of an asset maintained in Hong Kong by a Scheme member is to be calculated by deducting from the "relevant value" of the asset an amount equal to the "relevant percentage" of that value. It is not immediately self-evident how the figures for "relevant percentages" have been arrived at or why some items are perceived as carrying a proportionately higher risk than others. Given also that, under clause 5(3), the amount of assets specified to be maintained in Hong Kong by a Scheme member could be up to 200% of the amount of the relevant deposits maintained by that member, we note that the draft Rules adopt a fairly conservative approach overall.



Clause 5

Consideration should be given to expanding sub-clause (1)(b) to include a Scheme member carrying on its business “in a manner detrimental to the public interest”, unless there are other existing powers that would enable the MA to deal adequately with such a situation.

Under sub-clause (3) “asset” should presumably be “assets” plural.

Clause 6

Under sub-clause (2), an application for the withdrawal of a requirement for asset maintenance issued under clause 5(1), must be accompanied by, inter alia, “such information and documents as the Monetary Authority may reasonably require for the purpose of deciding whether the requirement should be withdrawn”. The provision is quite open-ended and does not indicate the nature of the information or documentation that the relevant Scheme member may be required to produce. It is, therefore, not clear how this provision will operate in practice, as it assumes that the applicant will already know what information the MA requires when the application is made. Presumably, either the application will be a two-stage process, or there will have to be exchanges between the relevant Scheme member and the MA in advance of the application. Consideration should be given to making the process more self-explanatory in the Rules.

Although clause 5 requires that a Scheme member should be given the opportunity to make written representations, which the MA must consider, before an asset maintenance requirement is issued, and so the scope for any misunderstandings should very limited, the terms of sub-clause 6(3) might nevertheless be too inflexible. In particular, it would seem that it might be prudent to extend the grounds for withdrawing a requirement, under clause 6(3)(a), so that it may be withdrawn where, e.g., the MA is satisfied that the reasons for issuing the requirement no longer exist, or that the requirement is no longer necessary as a result of other changes in circumstances.

I hope that you find the above comments to be constructive. If you have any comments or questions in relation to the above, please feel free to contact me on 2287 7084.

Yours sincerely,

A handwritten signature in black ink that reads 'Peter Tisman'. The signature is written in a cursive, slightly slanted style.

Peter Tisman
Director, Specialist Practices

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