ANNEX A

Functions of the Deposit Protection Board

It is proposed that the principal function of the Board will be to provide compensation to depositors for the loss of protected deposits to the extent provided by the DPS legislation. Specifically, the Board should have the following functions:

(i) to collect contributions from member banks;

(ii) to manage and administer the Deposit Protection Scheme Fund (DPS Fund);

(iii) to assess claims made against the DPS Fund and determine the eligibility and entitlement of depositors;

(iv) to make compensation payments to eligible depositors as determined; and

(v) to recover any amount paid out to a failed bank's depositors from the assets of the failed bank.

ANNEX B

Deposits Excluded From Protection

It is recommended that the following types of deposits should not be covered by the Deposit Protection Scheme:-

(i) a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;

(ii) a deposit that is secured on the assets of the bank;

(iii) a bearer instrument;

(iv) a deposit taken by an overseas office of the bank;

(v) a deposit held for the account of the Exchange Fund;

(vi) a deposit held by a multilateral development bank as defined in paragraph 1 of the Third Schedule to the Banking Ordinance;

(vii) a deposit held by a holding company[1] of the bank, a subsidiary of the bank or a subsidiary of the holding company;

(viii) a deposit held by a director, controller, chief executive or manager of the bank, a subsidiary of the bank, a holding company of the bank or a subsidiary of the holding company;

(ix) a deposit held by an authorized institution; and

(x) a deposit held by an overseas bank which is not an authorized institution in Hong Kong.

2. The above exclusions are largely based on the exclusions under the priority claim provisions in the Companies Ordinance. Among the items that are not excluded under the present priority claim system are "deposits secured on the assets of the bank" and "bearer instruments". The former is based on a similar exclusion in the U.K. scheme. The latter is based on the

[1] Under the existing priority claim system, a deposit held by a holding company that holds all of the shares of the bank is excluded from preferential treatment. It is proposed that the threshold of shareholding of the holding company should be reduced so that deposits held by a company that holds more than 50% of the shares of the bank (i.e. a holding company within the meaning of section 2 of the Companies Ordinance) would also be excluded from protection under the DPS. Similar amendments would also be made to the relevant provision in section 265 of the Companies Ordinance.

advice of the IMF and the Financial Stability Forum's Working Group on Deposit Insurance. Both organisations support the exclusion of bearer instruments such as certificates of deposits so as to avoid abuse of the coverage limit on a per-depositor basis. Consistent with the treatment of authorized institutions, deposits held by overseas banks which are not authorized institutions in Hong Kong would also be excluded.

<u>ANNEX C</u>

Treatment of Multi-beneficiary Accounts

Providing cover on a per-depositor basis requires consideration of how the limit should be applied to multi-beneficiary accounts such as joint, trust and client accounts. The crux of the issue lies in how to balance equitable treatment of depositors against the practical considerations of maintaining a simple and effective scheme.

2. The HKMA's proposals in respect of each type of these accounts are set out below:-

(i) Trust accounts – For active trusts, the trustee would be treated as a separate depositor and thus is entitled to compensation in his own right. For bare trusts (i.e. where a trustee holds property for a beneficiary who is absolutely and solely entitled to that property), each beneficiary would be allowed to claim compensation according to his entitlement to the account, but such claim would be aggregated with the balances in the beneficiary's other accounts with the failed bank in determining whether the coverage limit has been reached;

(ii) Client accounts – The underlying principals, rather than the agent in whose name the account is held, would be regarded as being entitled to compensation in respect of the balance in the client account. The entitlement of each principal in the account would then be aggregated with the balances in the principal's other accounts with the failed bank in determining whether the coverage limit has been reached;

(iii) Joint accounts – The balance in a joint account would be deemed to be equally held by all the account-holders unless there is satisfactory evidence as to their otherwise respective shares. The deemed share of each of the account-holders would then be aggregated with their respective other entitlements in determining whether the coverage limit has been reached; and

(iv) Partnership accounts – These accounts would be treated as a joint beneficial claim separate from those of the individual partners.

3. A schematic representation of the proposed treatment of multi-beneficiary is shown in the attachment.