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Legal Protection and Indemnification for Employees of Deposit Insurers and Other Financial System Safety-Net Participants

Indemnification and Legal Protection

1. Mandate of deposit insurer
 - Mandates, roles and responsibilities vary among deposit insurers. In DI nomenclature, generalised categories of “paybox” and “risk minimiser”.¹
 - Legal protection is more important for a risk minimiser deposit insurer compared to a paybox DI agency. In a system with paybox DI agency, legal protection is important for the agency responsible for intervening and closing troubled FIs – whether the central bank or supervisory authority.

2. Legal protection for financial supervisors and deposit insurers
 - The need for legal protection of financial supervisors and DI agencies is widely recognized:
 - a. Financial Stability Forum (FSF) Working Group on DI
 - b. Basel Core Principles (CP 1)
 - c. IAIS Insurance Core Principles.
 - Anxiety about potential reprisals (which goes beyond the threat of lawsuits, although that is the subject of this presentation) can reduce incentives for employees to be vigilant in carrying out their mandates. To facilitate effective supervision and early intervention, fundamental to protect the DI staff and bank supervisors against lawsuits for actions taken in good faith while discharging their duties.
 - In response to recommendations from recent FSAP evaluation of Singapore’s financial system², MAS has made recent legislative amendments to strengthen the legal protection for MAS and individuals

¹ Paybox deposit insurers focus on administrative DI functions, such as the collection of premium and payout to depositors. Paybox deposit insurers have no supervisory or bank resolution functions, which is the domain of the bank supervisor. Other deposit insurers can have a broader mandate with risk-minimization responsibilities and a role in supervision, intervention and resolution of failed member institutions.

² November 2002-August 2003

acting for MAS. For example, the revised legislation extends legal protection to any person acting under legislation administered by MAS, including board members. We intend provide similar legal protection for the DI agency, its staff and directors in the DI legislation.

3. Indemnification against legal costs

- Statutory legal protection provisions do not mean that legal action will not be brought against public officers. Thus, in principle, employees should also be indemnified against costs incurred in connection with defense of any proceedings brought against them for official actions, where the allegations are not proven.
- Putting this principle into practice raises several issues:
 - a. settlements without trial –without a judicial determination, how do we conclude if the employee acted in good faith?
 - b. whether the agency should fund the legal costs as they arise or on a reimbursement basis, only after the defense has proven successful?
 - c. whether indemnification should be automatic or discretionary
- MAS is currently studying how our arrangements for indemnification may be refined to afford better protection and provide greater clarity. CDIC could perhaps speak to their experience.

Accountability and Confidentiality

4. Accountability

- Accountability as a corollary of legal protection, to provide assurance of proper conduct by supervisors and deposit insurers.
- To enhance public disclosure of policy objectives and report on MAS' activities and performance, MAS publishes an annual report and regularly disseminates speeches, new policies and updates on the MAS website and various other publications.
- Financial statements of MAS' operations are subject to external audit by the Auditor-General and released in the annual report
- MAS also adopts a code of conduct to address any potential conflicts of interests. This encompasses requirements for disclosure of conflict of interests, restrictions and disclosure of personal investments and acceptance of gifts and entertainment.
- While the FSAP assessment views MAS as meeting many of the elements of the code of good practices on transparency in financial policies, there were recommendations for greater transparency to

strengthen accountability framework. Following FSAP' recommendations, MAS has taken measures to enhance disclosure and accountability particularly with regard to the responsibilities and objectives of MAS, and MAS' supervisory framework.

- For example, MAS will be publishing a monograph on MAS' objectives and principles of supervision to improve transparency on rationale for making supervisory decisions.

5. Confidentiality

- In order to discharge its mandates effectively and meet its policy objectives, a supervisor or deposit insurer needs adequate and timely access to information on financial institutions. This information may be proprietary or sensitive. Confidentiality of the information should be assured, both by reason of fairness to FIs, and to enable FIs to be forthcoming in providing information requested.
- MAS officers are required to maintain confidentiality of data and information handled in the course of their work. Official Secrets Act applies and offenders can be prosecuted. We intend to put in place similar confidentiality requirements on staff of DI agency.