

Provide for the vesting in Po Sang Bank Limited of certain undertakings of Bank of China, The Kwangtung Provincial Bank, Sin Hua Bank Limited, The China & South Sea Bank Limited, Kincheng Banking Corporation, The China State Bank, Limited, The National Commercial Bank Limited, The Yien Yieh Commercial Bank Limited and Hua Chiao Commercial Bank Limited, the transfer of shares in each of Nanyang Commercial Bank Limited, Chiyu Banking Corporation Limited and BOC Credit Card (International) Limited to Po Sang Bank Limited and for other related purposes.

Preamble

Whereas---

(a) Po Sang Bank Limited (hereinafter called "Po Sang") is a company incorporated under the laws of Hong Kong;

(b) Bank of China is a state-owned enterprise established under national law;

(c) The Kwangtung Provincial Bank, Sin Hua Bank Limited, The China & South Sea Bank Limited, Kincheng Banking Corporation, The China State Bank, Limited, The National Commercial Bank Limited and The Yien Yieh Commercial Bank Limited (hereinafter called "the Mainland incorporated banks") are companies incorporated under national law;

(d) each of the Mainland incorporated banks has a branch in Hong Kong;

(e) The Kwangtung Provincial Bank has a branch in Shenzhen Special Economic Zone, the People's Republic of China and Sin Hua Bank Limited has a branch in Shenzhen Special Economic Zone, the People's Republic of China;

(f) Nanyang Commercial Bank Limited (hereinafter called "Nanyang"), Hua Chiao Commercial Bank Limited (hereinafter called "Hua Chiao"), Chiyu Banking Corporation Limited (hereinafter called "Chiyu") and BOC Credit Card (International) Limited (hereinafter called "BOC-CC") are companies incorporated under the laws of Hong Kong;

(g) Po Sang, Bank of China, the Mainland incorporated banks, Hua Chiao, Nanyang and Chiyu are all banks licensed under the Banking Ordinance (Cap. 155) and carrying on the business of banking in Hong Kong and elsewhere;

(h) Po Sang, Bank of China, the Mainland incorporated banks, Hua Chiao, Nanyang, Chiyu and BOC-CC are all members of the Bank of China Group;

(i) for the better conduct of the businesses of the Bank of China Group, it is expedient that the respective undertakings of Po Sang, Bank of China Hong Kong Branch, the Hong Kong branches of the Mainland incorporated banks, Kwangtung Shenzhen Branch, Sin Hua Shenzhen Branch and Hua Chiao be merged and that such merger should be effected by means of a transfer of the undertakings of Bank of China Hong Kong Branch, the Hong Kong branches of the Mainland incorporated banks, Kwangtung Shenzhen Branch, Sin Hua Shenzhen Branch and Hua Chiao to Po Sang;

(j) in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of Po Sang, Bank of China Hong Kong Branch, the Hong

Kong branches of the Mainland incorporated banks, Kwangtung Shenzhen Branch, Sin Hua Shenzhen Branch and Hua Chiao, it is expedient to make provision to facilitate such merger without interference with the conduct and continuity of the respective businesses of Po Sang, Bank of China Hong Kong Branch, the Hong Kong branches of the Mainland incorporated banks, Kwangtung Shenzhen Branch, Sin Hua Shenzhen Branch and Hua Chiao;

(k) for the better conduct of the businesses of the Bank of China Group, it is expedient that Nanyang, Chiyu and BOC-CC should become subsidiaries of Po Sang and it is expedient to make provision to facilitate such transfers.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Bank of China (Hong Kong) Limited (Merger) Ordinance.

2. Interpretation

(1) In this Ordinance, unless the subject or context otherwise requires--- "appointed time" (指定時間) means such day and time as may be appointed pursuant to section 3;

"Bank of China" (中國銀行) means Bank of China, a state-owned enterprise established under national law;

"Bank of China Group" (中銀集團) means Bank of China and its subsidiaries;

"Bank of China Hong Kong Branch" (中國銀行香港分行) means---

(a) the business carried on by Bank of China in or from its branch in Hong Kong; and

(b) all existing property and liabilities of the Hong Kong branch of Bank of China of whatsoever nature as recorded in or created by any of the books and records of Bank of China and any other property and liabilities of the Hong Kong branch of Bank of China related thereto,

other than the excluded property and liabilities;

"BOC-CC" (中銀信用卡公司) means BOC Credit Card (International) Limited;

"books and records" (簿冊及紀錄) means any document, record (including an electronic record), report, letter or register of whatsoever nature kept by or on behalf of a person including without limitation the annual return and balance sheets and any ledger, day book, cash book, account book or bank book;

"certified copy" (核證副本) means a copy certified by a director, secretary or officer of Po Sang as being a true copy of the original;

"China & South Sea Bank" (中南) means The China & South Sea Bank Limited, a company incorporated under national law;

"China State Bank" (國華) means The China State Bank, Limited, a company incorporated under national law;

"Chiyu" (集友) means Chiyu Banking Corporation Limited;

"company" (公司) has the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155);

"customer" (客戶) means any person having a banking account, a loan account or other dealing, transaction, agreement or arrangement with Po Sang or, as the case may be, a merging bank;

"data protection principles" (保障資料原則) means any of the data protection principles set out in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486);

"electronic record" (電子紀錄) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"excluded property and liabilities" (除外財產及法律責任) means---

(a) the common seal of Hua Chiao;

(b) documents required to be kept by Hua Chiao pursuant to the Companies Ordinance (Cap. 32);

(c) the rights and liabilities of the transferring banks under the merger agreement;

(d) the issued and unissued share capital and rights in respect thereof of Po Sang; and

(e) subject to the agreement of the relevant transferring bank, such other property and liabilities of any merging bank as may at or before the appointed time be specified by way of a resolution or resolutions of the board of directors of Po Sang;

"existing" (現有) means existing, outstanding or in force immediately before the appointed time;

"the Hong Kong branches of the Mainland incorporated banks" (各內地成立銀行的香港分行) means---

(a) the businesses carried on by the Mainland incorporated banks in or from their branches in Hong Kong; and

(b) all existing property and liabilities of the Hong Kong branches of the Mainland incorporated banks of whatsoever nature as recorded in or created by any of the books and records of the Mainland incorporated banks and any other property and liabilities of the Hong Kong branches of the Mainland incorporated banks related thereto,

other than the excluded property and liabilities;

"Hua Chiao" (僑商) means Hua Chiao Commercial Bank Limited;

"Kincheng" (金城) means Kincheng Banking Corporation, a company incorporated under national law;

"Kwangtung" (省行) means The Kwangtung Provincial Bank, a company incorporated under national law;

"Kwangtung Shenzhen Branch" (省行深圳分行) means---

(a) the business carried on by Kwangtung in or from its branch in Shenzhen Special

Economic Zone, the People's Republic of China; and

(b) all existing property and liabilities of the Shenzhen branch of Kwangtung of whatsoever nature as recorded in or created by any of the books and records of Kwangtung and any other property and liabilities of the Shenzhen branch of Kwangtung related thereto,

to the extent that such business, property and liabilities are governed by Hong Kong law or the transfer of which is governed by Hong Kong law, other than the excluded property and liabilities;

"legal tender notes" (法定貨幣紙幣) has the meaning assigned to it by section 2 of the Legal Tender Notes Issue Ordinance (Cap. 65);

"liabilities" (法律責任) includes duties and obligations of every description (whether present or future, actual or contingent);

"Mainland incorporated bank" (內地成立銀行) means Kwangtung, Sin Hua, China & South Sea Bank, Kincheng, China State Bank, National Commercial Bank or Yien Yieh and a reference to "the Mainland incorporated banks" is a reference to all the Mainland incorporated banks;

"merger agreement" (合併協議) means the merger agreement executed in May 2001 by or on behalf of, amongst others, the transferring banks and Po Sang in relation to the transfers of the merging branches to Po Sang as amended from time to time;

"merging bank" (合併銀行) means a transferring bank but only in so far as the matter in question relates to its merging branch, and a reference to "the merging banks" is a reference to all the merging banks;

"the merging branches" (各合併分行) means Bank of China Hong Kong Branch, the Hong Kong branches of the Mainland incorporated banks, Kwangtung Shenzhen Branch, Sin Hua Shenzhen Branch and the undertaking of Hua Chiao, and a reference to "a merging branch" is a reference to one of the merging branches;

"Nanyang" (南僑) means Nanyang Commercial Bank Limited;

"National Commercial Bank" (浙興) means The National Commercial Bank Limited, a company incorporated under national law;

"note-issuing bank" (發鈔銀行) has the meaning assigned to it by section 2 of the Legal Tender Notes Issue Ordinance (Cap. 65);

"Po Sang" (寶生) means Po Sang Bank Limited, which name will be changed to "Bank of China (Hong Kong) Limited" (中國銀行(香港)有限公司) at the appointed time;

"Privacy Commissioner" (私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap. 486);

"property" (財產) means property and assets of every description wheresoever situate and rights of every description (whether present or future, actual or contingent), and includes property held on trust or in a fiduciary capacity and security interests,

benefits and powers of every description;

"Registrar of Companies" (公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32);

"security interest" (抵押權益) includes a mortgage or charge (whether legal or equitable and including any sub-mortgage), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment by way of security, indemnity, right of set-off, flawed asset arrangement, agreement or undertaking (whether in writing or not) or other means (in each case made, granted, arising or subsisting under any applicable law) of securing payment or discharge of a debt or liability (whether present or future, actual or contingent), whether or not that interest is evidenced in writing;

"Sin Hua" (新華) means Sin Hua Bank Limited, a company incorporated under national law;

"Sin Hua Shenzhen Branch" (新華深圳分行) means---

(a) the business carried on by Sin Hua in or from its branch in Shenzhen Special Economic Zone, the People's Republic of China; and

(b) all existing property and liabilities of the Shenzhen branch of Sin Hua of whatsoever nature as recorded in or created by any of the books and records of Sin Hua and any other property and liabilities of the Shenzhen branch of Sin Hua related thereto,

to the extent that such business, property and liabilities are governed by Hong Kong law or the transfer of which is governed by Hong Kong law, other than the excluded property and liabilities;

"subsidiary" (附屬公司) has the meaning assigned to it by section 2(4) of the Companies Ordinance (Cap. 32);

"the transferring banks" (各移轉銀行) means Bank of China, the Mainland incorporated banks and Hua Chiao, and a reference to "a transferring bank" is a reference to one of the transferring banks;

"undertaking of Hua Chiao" (僑商業務) means the business and all existing property and liabilities of Hua Chiao of whatsoever nature, other than the excluded property and liabilities;

"will" (遺囑) includes a codicil and any other testamentary writing;

"Yien Yieh" (鹽業) means The Yien Yieh Commercial Bank Limited, a company incorporated under national law.

(2) Any reference in the definitions of "Bank of China Hong Kong Branch" and "the Hong Kong branches of the Mainland incorporated banks" to a branch or, as the case may be, branches is a reference to all places at which Bank of China or the relevant Mainland incorporated bank or, as the case may be, the Mainland incorporated banks

carry on business in Hong Kong.

(3) Subject to any provision of this Ordinance to the contrary effect, any reference in this Ordinance to property or liabilities of a transferring bank, a merging bank or a merging branch is reference to property or liabilities to which the transferring bank, merging bank or merging branch, as the case may be, is for the time being entitled or subject (whether beneficially or in any fiduciary capacity), wherever such property or liabilities are situated or arise and whether or not capable of being transferred or assigned by the transferring bank, merging bank or merging branch, and whether the transferring bank, merging bank or merging branch is entitled to such property or subject to such liabilities under the laws of Hong Kong or under the laws of any country, territory or place outside Hong Kong.

(4) Any body politic or corporate and any other person or persons whose rights are affected by any of the provisions of this Ordinance shall be deemed to be mentioned herein.

3. Notice of appointed time

Po Sang shall give notice in the Gazette of the day and a time of that day expected to be the appointed time save that, in the event that such day and time proves not to be the appointed time for any reason, Po Sang shall give notice in the Gazette to that effect and shall again give notice in the Gazette of the next day and time expected to be the appointed time or, as the case may be, the day and time which was the appointed time.

4. Change of name

(1) At the appointed time, by virtue of this Ordinance the name of Po Sang shall, in accordance with this section be changed to "Bank of China (Hong Kong) Limited" (中國銀行(香港)有限公司).

(2) Not later than 7 days before the appointed time Po Sang shall deliver to the Registrar of Companies a copy of this Ordinance.

(3) The Registrar of Companies shall, pursuant to this Ordinance, register the copy of the Ordinance delivered to him pursuant to subsection (2) and at the appointed time shall enter the new name of Po Sang in the register in place of its former name and issue to Po Sang a certificate of incorporation on change of name stating Po Sang's new name.

5. Vesting of the merging branches and certain shares in Po Sang

(1) At the appointed time---

(a) the merging branches shall by virtue of this Ordinance and without further act or deed be transferred to, and vest in, Po Sang to the intent that Po Sang shall succeed to the merging branches as if in all respects Po Sang were the same person in law

as the relevant transferring bank; and

(b) the shares in Nanyang, Chiyu and BOC-CC held by Bank of China or its nominees shall by virtue of this Ordinance and without further act or deed be transferred to, and vest in, Po Sang or a nominee specified by Po Sang to the intent that Po Sang shall become the beneficial owner of all the shares in Nanyang, Chiyu and BOC-CC previously held by Bank of China or its nominees.

(2) In relation to any matter referred to in subsection (1), where the transferor is not a company incorporated in Hong Kong, subsection (1) shall be deemed to have effect for the purposes of Hong Kong law.

6. Issue of legal tender notes

(1) Subject to the Financial Secretary (with the approval of the Chief Executive in Council)---

(a) by notice in writing authorizing Po Sang to issue bank notes under section 3(2) of the Legal Tender Notes Issue Ordinance (Cap. 65) with effect from the appointed time; and

(b) by notice in the Gazette amending the Schedule to the Legal Tender Notes Issue Ordinance (Cap. 65) in accordance with section 6 of that Ordinance by repealing "1. Bank of China." from that Schedule and substituting "1. Bank of China (Hong Kong) Limited." with effect from the appointed time,

Bank of China shall cease to be a note-issuing bank and Po Sang shall become a note-issuing bank, in each case with effect from the appointed time.

(2) Subject to Po Sang becoming a note-issuing bank in accordance with subsection (1) and without prejudice to the provisions of the Legal Tender Notes Issue Ordinance (Cap. 65)---

(a) all legal tender notes issued by Bank of China prior to the appointed time shall at and from the appointed time by virtue of this Ordinance and without further act and deed be transferred to, and vest in, Po Sang to the intent that Po Sang shall succeed to such legal tender notes as if in all respects Po Sang were the same person in law as Bank of China, and such legal tender notes shall be deemed to have been issued by Po Sang who shall at and from the appointed time be liable to pay the bearer of such legal tender notes on demand at its office in Hong Kong;

(b) all bank notes of Bank of China which had they been issued by Bank of China prior to the appointed time would have constituted legal tender notes of Bank of China shall at the appointed time by virtue of this Ordinance and without further act or deed be transferred to, and vest in, Po Sang to the intent that Po Sang shall succeed to such bank notes as if in all respects Po Sang were the same person in law as Bank of China;

(c) Po Sang shall, subject to any terms and conditions specified by the Financial

Secretary in accordance with section 3(2) of the Legal Tender Notes Issue Ordinance (Cap. 65), at and from the appointed time by virtue of this Ordinance have the power to produce, store, distribute and issue in the name of Bank of China bank notes using the same designs and in the same denominations as Bank of China was authorized to issue immediately prior to the appointed time;

(d) any bank notes issued by Po Sang pursuant to paragraph (c) shall be deemed to be legal tender notes issued by Po Sang who shall at and from the appointed time be liable to pay the bearer of any such legal tender notes so issued on demand at its office in Hong Kong;

(e) Po Sang shall, subject to any terms and conditions specified by the Financial Secretary in accordance with section 3(2) of the Legal Tender Notes Issue Ordinance (Cap. 65), have the power to destroy any legal tender notes issued or deemed to be issued by Po Sang under this section;

(f) at and from the appointed time, all certificates of indebtedness issued to Bank of China under section 4 of the Exchange Fund Ordinance (Cap. 66) and all indebtedness owed to Bank of China under those certificates of indebtedness shall by virtue of this Ordinance and without further act or deed be transferred to, and vest in, Po Sang to the intent that Po Sang shall succeed to such certificates of indebtedness and all indebtedness owed under them as if in all respects Po Sang were the same person in law as Bank of China.

7. Trust property and wills

(1) Any property vested in Po Sang by virtue of this Ordinance which immediately before the appointed time was held by a merging bank, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will (whether originally so appointed or not, and whether appointed under hand or seal, or by order of any court or otherwise), or as executor of the will, or administrator of the estate, of a deceased person or as judicial trustee appointed by order of any court, or in any other fiduciary capacity, shall, at and from the appointed time, be held by Po Sang alone or, as the case may be, jointly with such other person, in the same capacity upon the trusts, and with and subject to the powers, provisions and liabilities, applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property became vested in a merging bank in any such fiduciary capacity as is referred to in subsection (1) (including in the case of a will any grant of probate thereof), and any provision in such instrument or order, or any existing contract or arrangement, for the payment to, or retention by, a merging bank of remuneration for its services in any such fiduciary capacity, shall, at and from the appointed time, be construed and have effect, so far as the context permits, as if for any

reference therein to the merging bank, other than a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, the merging bank, there were substituted a reference to Po Sang provided always that this subsection shall not prevent Po Sang from varying the remuneration or scale of fees payable in accordance with the terms of the relevant instrument or order.

(3) Any will made before the appointed time which has not been proved in Hong Kong before the appointed time, and any will made at or after the appointed time, being a will which appoints a merging bank to be an executor, trustee or recipient of any property as trustee, shall, at and from the appointed time, be construed and have effect as if for any reference therein to such bank as such executor, trustee or recipient or otherwise in connection with such appointment, not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, such bank, there were substituted a reference to Po Sang.

(4) No testamentary gift shall be deemed by reason only of the operation of any of the provisions of this Ordinance.

8. Supplementary provisions

Without prejudice to the generality of any other provision of this Ordinance but subject to any provision of this Ordinance to the contrary effect, the following provisions of this section shall have effect---

(a) All existing contracts, agreements, insurance policies, options, novations, certificates, awards, land grants, conveyances, deeds, leases, licences, notices, permits, guarantees, documents granting or comprising any security interest, bonds, indemnities, mandates, instructions and other instruments and undertakings entered into by, made with, given to or by or addressed to a merging bank (whether alone or with any other person and whether as principal or agent and whether in writing or not) shall be construed and have effect at and from the appointed time as if---

(i) Po Sang had been a party thereto instead of such bank;

(ii) for any reference (however worded and whether express or implied) to such bank there were substituted, as respects anything falling to be done at or after the appointed time, a reference to Po Sang;

(iii) any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of such bank were, as respects anything falling to be done at or after the appointed time, a reference to the directors of Po Sang or, as the case may require, to such director, officer or employee of Po Sang as Po Sang may appoint for that purpose or, in default of appointment, to the director, officer or employee of Po Sang who corresponds as nearly as may be to the first-mentioned director, officer or employee:

Provided that this paragraph shall not apply to the merger agreement or any

agreement expressed to be made pursuant or supplemented thereto.

(b) Paragraph (a)(ii) shall, subject to the provisions of sections 6 and 20, apply to any statutory provision, to any provision of any existing contract to which a merging bank was not a party and to any provision of any other existing document (not being a contract or a will) as they apply to a contract to which that paragraph applies.

(c) Any account between a merging bank and a customer shall, at the appointed time, be transferred to Po Sang and become an account between Po Sang and such customer subject to the same conditions and incidents as theretofore; and each such account shall be deemed for all purposes to be a single continuing account:

Provided that nothing in this Ordinance shall affect any right of Po Sang or of any customer to vary the conditions or incidents subject to which any account is kept.

(d) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent (whether in writing or not and whether or not in relation to an account) given to or by a merging bank, either alone or jointly with another person, shall apply and have effect, at and from the appointed time, as if given to or by Po Sang or, as the case may be, to Po Sang jointly with such other person.

(e) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, a merging bank, or payable at any place of business of a merging bank, whether so drawn, given, accepted or endorsed before, at or after the appointed time, shall have the same effect at and from the appointed time, as if it had been drawn on, or given to, or accepted or endorsed by Po Sang, or were payable at the same place of business of Po Sang.

(f) The custody of any document or record, goods or other thing held by a merging bank as bailee shall pass to Po Sang at the appointed time, and the rights and obligations of the merging bank under any contract of bailment relating to any such document or record, goods or thing shall at that time become rights and obligations of Po Sang.

(g) (i) Any security interest held immediately before the appointed time by a merging bank, or by a nominee or agent of or trustee for a merging bank, as security for the payment or discharge of any liability shall, at and from the appointed time, be held by, or, as the case may require, by that nominee, agent or trustee for, Po Sang, and be available to Po Sang (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of that liability.

(ii) In relation to any security interest vested in Po Sang in accordance with the provisions of this Ordinance and any liabilities thereby secured, Po Sang shall

be entitled to the rights and priorities and be subject to the obligations and incidents to which the merging bank in question would have been entitled and subject if it had continued to hold the security interest.

(iii) Without prejudice to the generality of subparagraph (ii), in any case where any existing liability subsists between a merging bank and Po Sang or between 2 merging banks, in respect of which a merging bank or Po Sang, or a nominee or agent of or trustee for a merging bank or Po Sang holds a security interest, that liability shall, for the purpose of enforcing or realizing that security interest, be deemed to continue in effect notwithstanding the vesting of the merging branches in Po Sang.

(iv) Any security interest referred to in subparagraph (i), (ii) or (iii) and which extends to future advances or liabilities shall, at and from the appointed time, be available to Po Sang (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of future advances and liabilities to the same extent and in the same manner in all respects as future advances by, or liabilities to, a merging bank were secured thereby immediately before that time.

(h) (i) Where by virtue of this Ordinance any right or liability of a merging bank is deemed to become a right or liability of Po Sang, Po Sang and all other persons shall, at and from the appointed time, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that right or liability as if it had at all times been a right or liability of Po Sang; and any legal proceedings or application to any authority existing or pending immediately before the appointed time by or against a merging bank may be continued by or against Po Sang.

(ii) Where any right or liability of a merging bank was before the appointed time the subject of arbitral proceedings to which the relevant merging bank was a party, Po Sang shall at and from the appointed time automatically be substituted for such bank as a party to those proceedings, without the need for consent from any other party or from the arbitrator.

(i) Any judgment or award obtained by or against a merging bank and not fully satisfied before the appointed time shall from that time, to the extent to which it is enforceable by or against such bank, become enforceable by or against Po Sang.

(j) Any court order which applies to a merging bank shall from the appointed time apply to Po Sang instead of to such bank.

(k) Nothing in this Ordinance shall terminate or prejudicially affect the appointment, authority, rights or powers of any receiver or of any receiver and manager appointed by a merging bank, whether alone or with others, before the appointed time.

(1) The Privacy Commissioner may, at and from the appointed time, exercise in respect of Po Sang any power under the Personal Data (Privacy) Ordinance (Cap. 486) which he could have immediately before the appointed time exercised in respect of a merging bank in respect of a breach or alleged breach by the merging bank of that Ordinance or the data protection principles; but the transfer to, and vesting in, Po Sang by this Ordinance of the merging branches, and any disclosure to Po Sang of any information in contemplation or as a result thereof, shall not amount to a breach of any duty of confidentiality to which a merging bank is subject immediately before the appointed time or to a contravention by Po Sang or a merging bank of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

9. Accounting treatment of Po Sang and the merging banks

(1) At and from the appointed time, by virtue of this Ordinance and notwithstanding the provisions of any other Ordinance, the balance sheets and profit and loss accounts of the merging banks and Po Sang for the financial year of each of the merging banks and Po Sang in which the appointed time falls shall be prepared in all respects as if the merging branches, and the shares in Nanyang, Chiyu and BOC-CC, had vested in Po Sang pursuant to section 5 on the first day of such financial year.

(2) Without prejudice to the generality of subsection (1), any profits or losses of the merging banks earned or incurred after the beginning of the financial year of the merging banks in which the appointed time shall occur, shall at and from the appointed time, by virtue of this Ordinance, be treated for all purposes as profits or, as the case may be, losses, of Po Sang.

(3) For the purposes of subsection (1), "merging banks" (各合併銀行) means the merging banks without the exclusion of any excluded property and liabilities.

10. Taxation and revenue matters

(1) For the purposes of the Inland Revenue Ordinance (Cap. 112), at and from the appointed time Po Sang shall be treated as if it were the continuation of and the same person in law as the merging banks.

(2) Accordingly (and without affecting the generality of subsection (1))---

(a) a vesting in Po Sang of any property or liabilities by virtue of this Ordinance does not constitute a sale or other disposal of or a change in the nature of that property or the liability for any purpose under the Inland Revenue Ordinance (Cap. 112);

(b) the aggregate amount of any losses sustained by the merging banks which are capable of but have not been carried forward and set off against assessable profits of the merging banks for the purposes of section 19C of the Inland Revenue Ordinance (Cap. 112) as at the end of the last complete financial year of the merging banks

are deemed to be losses of Po Sang and, accordingly, available for set off against the assessable profits of Po Sang (or Po Sang's share of assessable profits of a partnership in which it is a partner) for the purposes of that Ordinance.

(3) The profits or losses of the merging banks treated as profits or losses of Po Sang in accordance with section 9(2)---

(a) shall not be taken into account for the purpose of computing the profits or losses of the merging banks which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for any year of assessment; and

(b) shall be taken into account for the purpose of computing the profits or losses of Po Sang which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for the year of assessment the basis period for which includes the appointed time.

(4) For the purposes of this section, "merging banks" (各合併銀行) means the merging banks excluding Kwangtung Shenzhen Branch and Sin Hua Shenzhen Branch.

11. Contracts of employment

(1) Section 8(a) shall apply to a contract for the employment of any person by a merging bank and employment with a merging bank and Po Sang under any such contract shall be deemed for all purposes to be a single continuing employment.

(2) No director, secretary or auditor of a transferring bank shall by virtue only of this Ordinance become a director, secretary or auditor, as the case may be, of Po Sang.

12. Provident funds and gratuity benefits

(1) The deeds and rules constituting or relating to the provident fund schemes established for the benefit of employees of the merging banks and the gratuity benefits payable by the merging banks shall, at and from the appointed time, be construed and have effect, so far as the context permits, as if for any reference therein to the merging banks there were substituted a reference to Po Sang.

(2) No officer or employee of a merging bank who becomes an officer or employee of Po Sang by virtue of this Ordinance shall, by virtue of this Ordinance, be entitled to participate in any provident fund of or gratuity benefits payable by Po Sang, and no existing officer or employee of Po Sang shall, by virtue only of this Ordinance, be entitled to participate in any provident fund of or gratuity benefits payable by the merging banks.

13. Waiver of prohibition of merger

(1) Any provision contained in any contract or other document to which one of Po Sang, a transferring bank, Nanyang, Chiyu or BOC-CC or any of their respective subsidiaries is a party and which prohibits or has the effect of prohibiting the transactions referred to in this Ordinance, including but not limited to the transfer

and vesting of the merging branches in Po Sang, shall be deemed by this Ordinance to have been waived.

(2) Any provision contained in any contract or other document to the effect that a breach of contract or a default shall occur or be deemed to occur as a result of the transactions referred to in this Ordinance, including but not limited to the transfer and vesting of the merging branches in Po Sang, and to which one of Po Sang, a transferring bank, Nanyang, Chiyu or BOC-CC or any of their respective subsidiaries is a party shall be deemed by this Ordinance to have been waived.

14. Evidence: books and documents

(1) All books and other documents which would, before the appointed time, have been evidence in respect of any matter for or against a merging bank shall be admissible in evidence in respect of the same matter for or against Po Sang.

(2) In this section, "documents" (文件) has the same meaning as in section 46 of the Evidence Ordinance (Cap. 8).

15. Part III of Evidence Ordinance (Cap. 8)

(1) At and from the appointed time Part III of the Evidence Ordinance (Cap. 8) shall apply to the banker's records of the merging banks vested in Po Sang by virtue of this Ordinance, and to entries made in those records before the appointed time, as if such records were the records of Po Sang.

(2) For the purposes of section 20 of the Evidence Ordinance (Cap. 8), banker's records which are deemed to have become the banker's records of Po Sang by virtue of this Ordinance shall be deemed to have been the ordinary banker's records of Po Sang at the time of the making of any entry therein which purports to have been made before the appointed time, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

(3) For the purposes of sections 40 and 41 of the Evidence Ordinance (Cap. 8), documents previously in the custody or control of the merging banks shall by virtue of this Ordinance be deemed to be documents previously in the custody or control of Po Sang.

(4) In this section, "banker's records" (銀行紀錄) shall be construed in accordance with section 2 of the Evidence Ordinance (Cap. 8).

16. Evidence of vesting

(1) The production of a Government Printer's copy of this Ordinance shall, for all purposes, be conclusive evidence of the vesting or deemed vesting of the merging branches in Po Sang and the vesting of the shares in Nanyang, Chiyu and BOC-CC in Po Sang or its nominee in accordance with the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1)---

(a) a Government Printer's copy of this Ordinance, together with such evidence of

publication of notice of the appointed time---

(i) shall, in relation to any registered securities transferred to, and vested in Po Sang by virtue of this Ordinance, operate for all purposes as a duly executed instrument of transfer in respect of the transfer of such registered securities from the merging banks to Po Sang;

(ii) shall, together with a certified copy of any resolution made pursuant to paragraph (e) of the definition of "excluded property and liabilities" in section 2(1), be sufficient evidence that the property or liabilities mentioned within such a resolution are excluded property and liabilities;

(b) any deed or other document made or executed at or after the appointed time, whereby Po Sang or a merging bank, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by a merging bank immediately before the appointed time, whether alone or jointly with any other person, shall be sufficient evidence that the interest of the merging banks in that property is vested in Po Sang under this Ordinance;

(c) where there is any other transaction or purported transaction by Po Sang or a merging bank at or after the appointed time in connection with, or in relation to, any property or liabilities which are property or liabilities of the merging banks immediately before that time, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that Po Sang has full power and authority for that transaction as if the property or liabilities were vested in it under this Ordinance;

(d) a certificate given by or on behalf of Po Sang at any time at or after the appointed time that any property or liabilities specified in the certificate (which property or liabilities immediately before the appointed time are property or liabilities of a merging bank) are or, as the case may be, are not at the date so specified vested in Po Sang under this Ordinance, shall be conclusive evidence for all purposes of the fact so certified;

(e) nothing in paragraphs (c) and (d) shall affect the liability of Po Sang and the merging banks to each other in respect of anything done, or purporting to have been done, by either of them in connection with, or in relation to, any property or liabilities; and

(f) in this subsection---

"convey" (轉易) includes mortgage, charge, lease, assent, vest by way of vesting declaration or vesting instrument, disclaim, release or otherwise assure;

"registered securities" (註冊證券) means shares, stocks, debentures, loans, bonds,

units of a unit trust scheme or other shares of the investments subject to the trusts of such a scheme, and other securities of any description which are transferable and the holders of which are entered in a register (whether maintained in Hong Kong or not).

(3) Po Sang shall register or cause to be registered in the Land Registry a Government Printer's copy of this Ordinance in respect of the vesting of the relevant property of the merging banks in Po Sang.

(4) Nothing in this section applies to any property falling within section 17.

17. Transfers governed otherwise than by laws of Hong Kong

(1) Where the transfer and vesting of any property forming part of a merging branch is governed otherwise than by the laws of Hong Kong, the transferring bank in question shall, if Po Sang so requires, as soon as is practicable after the appointed time, take all necessary steps for the purpose of securing the effective transfer and vesting thereof to and in Po Sang and, pending such transfer or vesting, shall hold such property in trust for Po Sang.

(2) Where the transfer and vesting of the shares in Nanyang, Chiyu and BOC-CC is governed otherwise than by the laws of Hong Kong, the owner of such shares shall, if Po Sang so requires, as soon as is practicable after the appointed time, take all necessary steps for the purpose of securing the effective transfer and vesting thereof to and in Po Sang or its nominee and, pending such transfer or vesting, shall hold such shares on trust for Po Sang or its nominee.

18. Interests in land

(1) The vesting and deemed vesting in Po Sang of an interest in land by virtue of this Ordinance shall not---

(a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of section 53(4)(a) or (7)(a), 119E(2) or 119H(1)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7); or

(b) constitute an assignment or underlease of, or an agreement to assign or underlet, that interest for the purposes of section 6(1)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7); or

(c) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest for the purposes of any provision contained in any instrument concerning or affecting that interest; or

(d) operate as a breach of covenant or condition against alienation; or

(e) give rise to any forfeiture, damages or other right of action; or

(f) invalidate or discharge any contract or security interest; or

(g) operate so as to merge any leasehold interest in the reversion expectant on it; or

(h) extinguish, affect, vary, diminish or postpone any priority of that interest, whether under the Land Registration Ordinance (Cap. 128), at law or in equity.

(2) All existing registration of any interest in land in the name of a merging bank (whether alone or with any other person) shall be construed and have effect at and from the appointed time as if Po Sang had been entered on the land register instead of such bank.

19. Completion and deduction of title of property

To enable Po Sang to complete a title, if thought fit, to any property transferred to it and vested in it by virtue of this Ordinance by notice of title, deed, instrument or otherwise, or to deduce title, this Ordinance shall be deemed to be, and may be used as, an assignment or assignation, conveyance, transfer or, as the case may be, general disposition of such property in favour of Po Sang.

20. Saving for enactments concerning banking institutions

Nothing in this Ordinance shall exempt a transferring bank, Po Sang, Nanyang or Chiyu or any subsidiary of a transferring bank, Po Sang, Nanyang or Chiyu from the provisions of any enactment regulating the carrying on of the business of any of them.

21. Saving for companies

Nothing in this Ordinance shall prejudice the powers of any transferring bank, or Po Sang, Nanyang, Chiyu or BOC-CC to alter its memorandum and articles of association or other constitutive documents or to dispose of, or deal with, its property, security interests or liabilities or to carry on or discontinue any part of its business; and nothing in this Ordinance shall prejudice the power of any member of the Bank of China Group to dispose of, or deal with, their property, security interests or liabilities before the appointed time.

22. Saving

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them.

Explanatory Memorandum

The purpose of this Bill is---

(a) to make provision for the transfer of the undertakings of---

(i) the Hong Kong branch of Bank of China, which is licensed as a bank under the Banking Ordinance (Cap. 155) and is a state-owned enterprise established under

national law;

(ii) the Hong Kong branches of The Kwangtung Provincial Bank, Sin Hua Bank Limited, The China & South Sea Bank Limited, Kincheng Banking Corporation, The China State Bank, Limited, The National Commercial Bank Limited and The Yien Yieh Commercial Bank Limited (together "the Mainland incorporated banks"), each of which is licensed as a bank under the Banking Ordinance (Cap. 155) and is a company incorporated under national law;

(iii) Hua Chiao Commercial Bank Limited ("Hua Chiao"), which is licensed as a bank under the Banking Ordinance (Cap. 155) and incorporated in Hong Kong; and

(iv) the branches of The Kwangtung Provincial Bank ("Kwangtung") and Sin Hua Bank Limited ("Sin Hua") in Shenzhen Special Economic Zone, the People's Republic of China ("Shenzhen"), but only to the extent that these branches have business, property and liabilities which are governed by Hong Kong law or the transfer of which is governed by Hong Kong law,

to Po Sang Bank Limited ("Po Sang"), which is licensed as a bank under the Banking Ordinance (Cap. 155) and incorporated in Hong Kong; and

(b) to make provision for the transfer of the shares held by Bank of China or its nominees in---

(i) Nanyang Commercial Bank Limited ("Nanyang") and Chiyu Banking Corporation Limited ("Chiyu"), which are both licensed banks under the Banking Ordinance (Cap. 155) and incorporated in Hong Kong; and

(ii) BOC Credit Card (International) Limited ("BOC-CC"), which is incorporated in Hong Kong,

to Po Sang, so such companies become subsidiaries of Po Sang.

2. The Bill provides for the vesting of the undertakings of---

(a) the Hong Kong branch of Bank of China;

(b) the Hong Kong branches of the Mainland incorporated banks;

(c) Hua Chiao; and

(d) the branches of Kwangtung and Sin Hua in Shenzhen, but only to the extent that these branches have business, property and liabilities which are governed by Hong Kong law or the transfer of which is governed by Hong Kong law,

(together "the merging branches") in Po Sang at the appointed time (clause 5). The Bill also provides that the shares held by Bank of China in Nanyang, Chiyu and BOC-CC shall vest in Po Sang at the appointed time (clause 5).

3. The Bill contains a number of supplementary provisions relating, inter alia, to---

(a) the name of Po Sang being changed to "Bank of China (Hong Kong) Limited" (中國銀行(香港)有限公司) at the appointed time (clause 4);

- (b) the effect of the vesting in relation to trusts and wills (clause 7);
- (c) relationships with customers, borrowers and third parties (clause 8);
- (d) accounting and taxation matters (clauses 9 and 10);
- (e) employment and provident fund matters (clauses 11 and 12);
- (f) evidence (clauses 14 to 16); and
- (g) interests in land and the completion and deduction of title to property (clauses 18 and 19).

4. Bank of China is a note-issuing bank under the Legal Tender Notes Issue Ordinance (Cap. 65). Bank of China and Po Sang intend to approach the Financial Secretary to request that, subject to the Financial Secretary obtaining the approval of the Chief Executive in Council, the Financial Secretary exercises his powers under section 3(2) of the Legal Tender Notes Issue Ordinance (Cap. 65) to authorize Po Sang (subject to Po Sang changing its name to "Bank of China (Hong Kong) Limited" (中國銀行(香港)有限公司) at the appointed time as provided for in clause 4) as a note-issuing bank in place of Bank of China with effect from the appointed time.

5. Clause 6 provides that if the Financial Secretary authorizes Po Sang as a note-issuing bank then all legal tender notes issued by Bank of China before the appointed time shall continue to be legal tender notes and shall become obligations of Po Sang. The certificates of indebtedness issued by the Financial Secretary to back such legal tender notes shall also transfer to Po Sang.

6. Clause 6 also authorizes Po Sang, once it has changed its name to "Bank of China (Hong Kong) Limited" (中國銀行(香港)有限公司) and subject to any conditions imposed by the Financial Secretary, to issue legal tender notes in the name of Bank of China, using the same designs and in the same denominations as Bank of China is currently authorized to issue.

CLIFFORD CHANCE

Solicitors for Bank of China