

立法會
Legislative Council

LC Paper No. CB(1) 1950/00-01
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Legislative Council
Panel on Financial Affairs

Minutes of special meeting held on
Tuesday, 19 June 2001 at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon Henry WU King-cheong, BBS (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Hon Albert HO Chun-yan
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, JP
Hon NG Leung-sing
Hon James TO Kun-sun
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP
- Non-Panel Member attending** : Hon Cyd HO Sau-lan
- Member absent** : Hon LEE Cheuk-yan

**Public officers
attending**

- : Mr Stanley WONG
Deputy Secretary for Financial Services
- Mr Y K CHOI
Executive Director (Banking Supervision), Hong
Kong Monetary Authority
- Ms Esther LEUNG
Principal Assistant Secretary (Treasury) (Revenue)
- Mr Richard SO
Assistant Commissioner, Inland Revenue
Department
- Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs

**Attendance by
invitation**

- : Dr LIU Jin-bao
Chief Executive, Bank of China
- Ms Clarina MAN Hui-ling
Deputy General Manager, Bank of China
- Ms Isabelle TSANG Siu-Ying
Legal Consultant, Bank of China
- Mr Roger DENNY
Partner, Clifford Chance
- Mr Jonathan GRANT
Lawyer, Clifford Chance
- Mr CHAN Kay-cheung
Executive Director, The Bank of East Asia, Limited
- Mr Alan COLLINS
Legal Consultant, The Bank of East Asia, Limited
- Ms Mimi KAM
General Manager, The United Chinese Bank

Ms Jill WONG
Consultant, Allen & Overy

Mr Michael TROPEA
Associate, Allen & Overy

Clerk in attendance : Mrs Florence LAM
Chief Assistant Secretary (1)4

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Connie SZETO
Senior Assistant Secretary (1)1

I Briefing on the Bank of China (Hong Kong) Limited (Merger) Bill and The Bank of East Asia, Limited Bill
(LC Papers No. CB(3) 743 & 762/00-01, LS 114 & 122/00-01, CB(1) 1576/00-01(01) & (02), 1578/00-01(01), (02) & (03), 1590/00-01(01) & (02), 1593/00-01, 1618/00-01, 1620/00-01)

The Chairman said that the meeting had been arranged at the request of members at the House Committee meeting held on 15 June 2001. The purpose was to brief members on issues relating to the Bank of China (Hong Kong) Limited (Merger) Bill (BOC(HK) Bill) and The Bank of East Asia, Limited Bill (BEA Bill) which were private member's bills introduced by Dr David LI Kwok-po and Mr NG Leung-sing respectively. Representatives of the Administration and the two banking groups had been invited to the meeting.

Declaration of interests by members

2. Dr David LI Kwok-po said that he was the Chairman and Chief Executive of The Bank of East Asia, Limited (BEA). Mr NG Leung-sing said that he was an employee of the Bank of China Group. The Chairman informed members that his solicitor firm had business dealings with the two banking groups.

Briefing on the two Bills

3. Members noted that the BOC(HK) Bill sought to provide for the merger of the Hong Kong branches of eight mainland incorporated banks, a locally incorporated bank, the Shenzhen branches of two mainland incorporated banks with Po Sang Bank Limited (Po Sang), a locally incorporated bank. The Bill also provided for the transfer of shares held by Bank of China (BOC) in two locally incorporated banks and a locally incorporated credit card subsidiary company to Po Sang. At the appointed time, Po Sang would change its name to Bank of China (Hong Kong) Limited (BOC(HK)).

4. Dr LIU Jin-bao, Chief Executive of BOC, said that to effect the proposed merger through a private member's bill would expedite the process without interfering in the conduct and continuity of the businesses of the banks concerned. The proposed merger would enhance the cost-effectiveness of the businesses and the quality of services to bank customers. Moreover, early passage of the Bill would provide a clear direction for the existing 15,000 staff members to tackle the imminent restructuring of the banks' operations. The Bank of China Group had issued letters to inform customers about the proposed merger and arranged dedicated teams of staff to handle customer enquiries on related matters.

5. Mr CHAN Kay-cheung, Executive Director of BEA, explained that the BEA Bill sought to provide for the transfer of the undertaking of United Chinese Bank Limited (UCB) to BEA, thus effecting a merger between the two banks. Written notices of the proposed merger had been issued to 880,000 and 50,000 customers of BEA and UCB respectively. The banks had also provided special enquiry services to customers on merging-related matters. No adverse comments from customers had been received so far.

6. The Deputy Secretary for Financial Services (DS/FS) said that the Administration welcomed the two Bills which were in line with the Government's policy to support consolidation of the banking sector in Hong Kong. The proposed mergers would promote stability of the banking system, enhance cost-effectiveness and internal controls of the banks concerned, and facilitate supervision of the merged entities by the Hong Kong Monetary Authority (HKMA).

Discussion by members

Note issuing bank

7. In response to Miss Cyd HO's enquiry about the effect of the BOC(HK) Bill on the status of BOC as a note issuing bank, the Executive Director (Banking Supervision) of HKMA (ED(BS)/HKMA) said that the

intention of the Bill was to appoint the merged entity, i.e. BOC(HK), as a note issuing bank in place of BOC at the appointed time. Subject to the approval of the Chief Executive in Council, the Financial Secretary would exercise his powers under the Legal Tender Notes Issue Ordinance (Cap. 65) to authorize BOC(HK) as the note issuing bank. Clause 6(2) of the Bill set out the rights and obligations that BOC(HK) would assume upon authorization. From the appointed time, BOC(HK) would have the power to produce, store, distribute and issue bank notes in the name of BOC using the same designs and in the same denominations as BOC was authorized to issue. All BOC bank notes already issued would continue to be legal tender notes. HKMA was satisfied that the proposed arrangements would be seamless and would maintain the public's confidence in the BOC bank notes.

8. On Miss Cyd HO's concern about the financial soundness of BOC(HK) to become a note issuing bank, ED(BS)/HKMA stressed that as the regulator of banks, HKMA had to ensure that the merged entity could meet requirements on paid-up capital and liquidity. Moreover, the certificates of indebtedness issued to BOC under the Exchange Fund Ordinance (Cap. 66) to back the legal tender notes and all indebtedness owed to BOC thereunder would be transferred to BOC(HK).

Taxation

9. Mr Albert HO pointed out that under clause 10 of the BOC(HK) Bill, BOC(HK) would be able to qualify under section 19C(4) of the Inland Revenue Ordinance (IRO) (Cap. 112) to claim set-off of loss which might have been incurred by the merging banks against the profits of BOC(HK). Clause 8 of the BEA Bill had a similar effect, allowing any profits and losses of UCB to be treated as the profits and losses of BEA from the beginning of the financial year of the merger. Mr HO expressed concern as to whether these provisions were consistent with the existing policy.

10. In response, the Principal Assistant Secretary for the Treasury (Revenue) confirmed that the Government's policy had been consistently applied. She explained that section 19C(4) of IRO, which governed the set-off of losses incurred by a corporation, provided that where a corporation in any year of assessment sustained a loss in a trade, profession or business, the amount of that loss should be set off against the assessable profits of the same corporation for that year of assessment, and to the extent not so set off, should be carried forward and set off against the same corporation's assessable profits for subsequent years of assessment. Under the proposed Bills, BOC(HK) would be treated as if it were the continuation of and the same person in law as the merging banks and BEA would be deemed to be the same person in law as UCB; hence such set-off would be permissible following their respective mergers. She added that the same policy would apply to other mergers, if the

surviving entity was deemed to be one and the same as the merging entities in law.

11. In order to allay members' concern, Mr SIN Chung-kai suggested that the Government should reiterate the above policy on taxation arrangements during resumption of the second reading debate on the Bills. The Administration undertook to do so.

Security interest

12. Mr Albert HO pointed out that after the mergers, a mortgagor of an "all-monies mortgage" granted by a merging bank might be liable for repayment of loans extended by all merging entities. Representatives of the two banks assured members that the liability of the mortgagor under the security for the repayment of loans would not be increased by virtue of the mergers.

13. Mr Albert HO noted that Committee Stage Amendments (CSAs) would be proposed to clause 8(g) of the BOC(HK) Bill and clause 7(g) of the BEA Bill to clarify the intent. Mr SIN Chung-kai was of the view that the drafting of the proposed CSAs for the two Bills should be consistent as far as possible. The Assistant Legal Adviser 1 (ALA1) would study the drafts.

Terms of mortgages

14. Mr James TIEN conveyed the Liberal Party's support for the two Bills. He also pointed out that some banks would not allow property owners to take advantage of favourable mortgage terms unless re-financing was carried out. He asked whether BOC(HK) and BEA would offer more favourable terms to mortgagors in view of the mergers.

15. In reply, Miss Isabelle TSANG, Legal Consultant, BOC and Mr CHAN Kay-cheung confirmed that the original terms and conditions of the mortgage would continue to apply. ALA1 advised that there were provisions under the two Bills to provide for the continuity of the mortgages after the mergers.

Personal Data (Privacy) Ordinance

16. Members noted that clause 8(1) of the BOC(HK) Bill provided that any transfer to or vesting in BOC(HK) of the branches of the merging banks and any disclosure to BOC(HK) of any information of these branches should not amount to a breach of the common law duty of confidentiality between a banker and its customers (including corporate customers), or a contravention of the Personal Data (Privacy) Ordinance (PDPO) (Cap. 486) or the data

protection principles. Clause 7(1) of the BEA Bill had a similar effect. Members noted the advice given by ALA1 that this was an unprecedented provision since there were no ordinances for merger of banks enacted after the commencement of the relevant provisions of PDPO in December 1996.

17. Miss Cyd HO questioned the need for inclusion of the provision in the Bills and the consequence of deleting them. In particular, she was concerned whether the transfer and disclosure of information in contemplation or as a result of the merger would amount to a contravention of Data Protection Principle 3 (DPP 3) under PDPO. DPP 3 provided that personal data should not, without the prescribed consent of the data subject, be used for any purpose other than (a) the purpose for which the data were to be used at the time of the collection of the data; or (b) a purpose directly related to the above purpose. Some members also pointed out that as the term "use", in relation to personal data, included disclosure or transfer of the data, they were concerned that the transfer or disclosure of information for the purpose of merger without the prescribed consent of the data subject would constitute a contravention of DPP 3.

18. In response, the Principal Assistant Secretary for Home Affairs (PAS/HA) said that the Administration's position was that as the line of business of the resultant entity would be essentially the same as that of the original entities, and as there was likely to be little change in the purpose for which the data were to be used, there was no objection to clause 8(1). He added that the Privacy Commissioner for Personal Data (PC for PD) had been consulted on the clause and advised that he had no objection. At members' request, the Administration agreed to seek the views of PC for PD on the interpretation of DPP 3. In response to members' questions, PAS/HA said that the Human Rights Unit of the Department of Justice (D of J) had advised no objection to the clause and he would find out whether D of J's advice on the Bills could be made available to members.

(Post-meeting note: The views of PC for PD and D of J were circulated to members vide LC Paper No. CB(1) 1618/00-01 and 1620/00-01 respectively on 21 June 2001.)

19. Miss Cyd HO was of the view that the Administration should consider whether exemption should be made in PDPO for mergers in general rather than exempting the banks concerned from the data protection requirements under the Ordinance. PAS/HA said that as this would constitute a matter of policy, the Administration would have to carry out further study on the subject before taking a view. He stressed that in considering the matter, the Administration would endeavour to achieve a proper balance between the economic interests of society and the privacy rights of individuals.

Admin

20. Responding to Miss Cyd HO's enquiry as to whether the two banking groups were prepared to obtain prescribed consent from the data subjects, Ms Isabelle TSANG advised members that all customers who had accounts with the merging banks had been issued with, and were dealing with, the relevant banks on the basis of the Bank of China Group's General Terms

and Conditions for Banking Services. Clause 10.2 of this document authorized the relevant merging bank to provide and to divulge information in respect of the customer or in connection with the bank account or any service or transaction to any other member of the Bank of China Group. Hence, the transfer of data between companies in the same group would not constitute a breach of PDPO. Mr Alan COLLINS, Legal Consultant of BEA, said that UCB had become a subsidiary of BEA since 1995. The standardized notice relating to PDPO, which was issued to customers by all banks in Hong Kong, had specified the purposes for which the personal data would be used and the parties to whom the data could be transferred and disclosed. Such parties included the banks belonging to the same banking group. The solicitors acting for the two banking groups pointed out that given the large number of customers, it would be impractical to seek the personal and explicit consent of all customers for the transfer of personal data.

21. ALA1 pointed out that it was unclear whether customers' agreement to accept BOC's General Terms and Conditions would amount to prescribed consent under PDPO. Mr Roger DENNY, Partner, Clifford Chance, said that clause 8(1) of the BOC(HK) Bill was intended to deal with those cases where there might be some doubt as to whether prescribed consent should be obtained and such prescribed consent had not been obtained at the appointed time for the merger. Moreover, the clause would overcome the difficulty of breaching the common law duty of confidentiality that existed between a banker and its customers, and between a credit company and its customers. He added that there were similar provisions in the bank merger laws in the United Kingdom which were designed to overcome the above technical difficulties.

22. In this connection, Mr CHAN Kam-lam remarked that a transfer of customers' personal data was necessary to facilitate the mergers. Mr NG Leung-sing pointed out that the customers should have confidence in the systems of the banks to protect personal data. At the request of members, Miss Isabelle TSANG undertook to provide the Panel with a copy of the Bank of China Group's General Terms and Conditions for Banking Services.

(Post-meeting note: The information was circulated to members vide LC Paper No. CB(1) 1593/00-01 on 20 June 2001.)

Panel report to the House Committee

23. Members generally found the briefing useful in clarifying the issues raised in relation to the Bills. Mr CHAN Kam-lam expressed support for the Bills and suggested that the Panel should recommend to the House Committee that there was no need to set up a Bills Committee to scrutinize the Bills. Mr Philip WONG, Mr SIN Chung-kai and Miss Cyd HO considered that it would be inappropriate for the Panel to make such a recommendation since the

decision on whether a Bills Committee should be formed should rest with the House Committee. After further discussion, members agreed that the Panel should submit a report to the House Committee at its meeting on 22 June 2001 to report on the Panel's deliberations.

II Any other business

24. There being no other business, the meeting ended at 4:15 pm.

Legislative Council Secretariat
3 September 2001