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Messrs Allen and Overy
9th Floor
Three Exchange Square
Central
Hong Kong

7 June 2001

BY FAX & BY POST

Fax No. : 2974 6999
Total no. of page(s) : 3

(Attn : Mr Michael Tropea)

Dear Mr Tropea,

The Bank of East Asia, Limited Bill

With reference to our recent telephone conversation on the above draft Bill published in the Gazette on 1 June 2001, I write to seek your clarification on the following :

Approval of the Hong Kong Monetary Authority

1. Has the Monetary Authority given the following approval or consent in writing under the Banking Ordinance (Cap. 155) :
 - (a) the approval under section 69 for United Chinese Bank to make any arrangement or enter into any agreement for the sale or disposal of all of its banking business;
 - (b) if the branches of United Chinese Bank would become the branches of Bank of East Asia after the appointed day, the approval under section 44 for establishing or maintaining such local branches; and
 - (c) any other approval or consent under the Banking Ordinance?

Revocation of banking licence

2. Clause 4(1)(c) of the Bill provides that "on the appointed day, by virtue of the Ordinance" (after the Bill becomes an Ordinance), the banking licence of United Chinese Bank shall be revoked in accordance with Part V of the Banking Ordinance (Cap. 155) on and from a day to be appointed by the Monetary Authority. Please explain how the revocation of banking licence relates to the appointed day and the Bill.

3. Under section 22(3) of the Banking Ordinance, the Monetary Authority shall by notice in writing served on the institution specify the date on and from which the revocation shall take effect and, accordingly, that authorization shall be revoked on and from that date. Clause 4(1)(c) of the Bill further requires that the day of revocation be published in the Gazette. Who would be responsible for the publication in the Gazette? Has the Monetary Authority agreed to such arrangement?

Trust property and wills

4. Please explain the policy intent of Clause 6(2) and (3).

Personal Data (Privacy) Ordinance

5. Under Clause 7(1) of the Bill, the transfer to and vesting in Bank of East Asia of the undertaking of United Chinese Bank and any disclosure to Bank of East Asia of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which United Chinese Bank is subject immediately before the appointed day or to a contravention by Bank of East Asia or United Chinese Bank of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles. Is there any information that would assist Members in considering this Clause? Do your clients intend to obtain prescribed consent from the data subjects?

Taxation

6. Under Clause 8(1) of the Bill, all assets, liabilities and every existing reserve of United Chinese Bank shall be transferred to Bank of East Asia. Under Clause 8(3), any profits or losses of United Chinese Bank earned or incurred after the beginning of the financial year of United Chinese Bank in which the appointed day

shall occur, shall on and from the appointed day, and by virtue of the Bill, be treated for all purposes as profits or, as the case may be, losses of Bank of East Asia. Please confirm in writing that United Chinese Bank has no trading loss that may be set off by the Bank of East Asia against its assessable profits.

Stamp duty

7. Please confirm that an authentic copy of the Bill enacted as an Ordinance would be stamped with the stamp duty chargeable on the transfer and vesting of immovable properties and Hong Kong stocks in accordance with section 4(8) of the Stamp Duty Ordinance (Cap. 117).

To assist Members of the House Committee to consider the Bill, I would appreciate it if your reply could reach me on or before 11 June 2001.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

c.c. LA

Hon NG Leung-sing (Fax no. : 2536 9821)

United Chinese Bank Limited (Attn : Ms Mimi Kam)
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11th June, 2001

BY FAX 2877 5029 & BY POST

Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Attn: Ms. Bernice Wong, Assistant Legal Adviser

Dear Ms. Wong,

The Bank of East Asia, Limited Bill 2001 ("Bill")

We refer to your letter dated 7th June, 2001 and your subsequent telephone conversation with Michael Tropea of this office. We address each of your questions in turn.

Approval of the Hong Kong Monetary Authority

1. We report the following status of approval or consent of the Hong Kong Monetary Authority ("**HKMA**") under the Banking Ordinance (Cap.155):
 - (a) United Chinese Bank Limited ("**UCB**") has submitted an application under section 69 for approval of the arrangement/agreement for the sale or disposal of UCB's banking business. The HKMA has already given its written consent to the bank's application.
 - (b) The Bank of East Asia, Limited ("**BEA**") and UCB intend to submit an application shortly for approval under section 44 for the transfer of UCB's

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branches to BEA. We are instructed by our client that Mr. Y.K. Choi of the HKMA has informally indicated that HKMA approval will be granted after the Bill has been passed.

- (c) BEA is also in the process of obtaining authorisation from the HKMA to employ managers and directors of UCB under section 73 of the Banking Ordinance. Under section 73, a person who is or was a director of, or is or was concerned in the management of, an authorized institution whose licence has been revoked must obtain the consent of the HKMA before working for another authorized institution. UCB's licence will be revoked by the HKMA on the appointed day. The authorisation of former employees of UCB can only take place after UCB's licence has been revoked. Therefore, BEA and UCB intend to submit applications under section 73 in respect of the relevant employees after the Bill has been passed. We are instructed by our client that Mr. Y.K. Choi of the HKMA has indicated that the HKMA agrees with this course of action.

Under section 16 of the Bill, nothing in the Bill shall exempt UCB or BEA or any of their subsidiaries from the provision of any enactment regulating the carrying on of their businesses. It is the view of both BEA and UCB that pursuant to this saving provision, even if all necessary HKMA approvals have not been obtained prior to the Bill being passed, the passage of the Bill into law will not exempt BEA or UCB from having to obtain such approvals subsequently.

Revocation of banking licence

2. Under clause 4(1)(c) of the Bill, the HKMA shall appoint a day, which day shall be published in the Gazette, on which the banking licence of UCB shall be revoked in accordance with the Part V of the Banking Ordinance. We agree that, in theory, the date of revocation of the banking licence of UCB could occur some time after the appointed day. However, the HKMA has indicated that the licence shall be revoked on the appointed day and UCB and BEA will continue to liaise with the HKMA in this regard.
3. UCB and BEA will be responsible for publishing notice of the date of revocation of the banking licence in the Gazette. They intend to publish a joint notice in the Government Gazette in early August. We are instructed that the HKMA has agreed to this arrangement, which will, of course, be subject to the HKMA formally nominating the appointed day as a day on which the banking licence of UCB is to be revoked.

Trust property and wills

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4. If UCB is appointed as a trustee, executor or other type of fiduciary pursuant to a trust deed, will or other similar type of document, clauses 6(2) and (3) of the Bill provide that such document should be read as if any reference to UCB were replaced by reference to BEA.

The inclusion of the phrase "*not being a reference (however worded and whether expressly implied) to the terms and conditions of, or to the scale fees of, United Chinese Bank*" ensures that BEA, when acting as a trustee, executor or other fiduciary after the appointed day, is subject to the standard terms and conditions and the standard scale of fees which UCB was subject to before the appointed day.

For example, if a customer appointed UCB to act as a trustee before the appointed day, and the trust deed provided that UCB may charge fees in accordance with its standard scale, after the appointed day, BEA would replace UCB as trustee under that deed, but BEA would only be permitted to charge fees in accordance with UCB's standard scale of fees (subject to any revision in accordance with the terms of the trust deed).

Personal Data (Privacy) Ordinance

5. All of the previous bank merger ordinances in Hong Kong were passed before the introduction of the Personal Data (Privacy) Ordinance in 1996. Section 7(1) deals with the issues of data privacy that now arise after the introduction of that Ordinance.

Section 7(1) provides that after the appointed day, the Privacy Commissioner may exercise, in respect of BEA, any power which he may, before the appointed day, have exercised in respect of UCB. It also provides that the transfer of personal data from UCB to BEA does not give rise to a breach of any duty of confidentiality or contravention of the Ordinance.

While this provision has not been included in the previous Hong Kong bank merger ordinances, similar provisions have been included in bank merger legislation overseas (for example, the Citibank International Act 1993 of the United Kingdom). The Office of the Privacy Commissioner of Personal Data has reviewed section 7(1) of the Bill and their comments are reflected in the current wording of the provision.

In our view, the inclusion of section 7(1) into the Bill precludes the need for BEA and UCB to obtain prescribed consent from the data subjects under the Personal Data (Privacy) Ordinance.

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Taxation

6. BEA's accountant, KPMG, has advised BEA in writing that, based on the projected and audited financial forecasts and the related tax computations of BEA and UCB, neither BEA nor UCB will sustain a loss for Hong Kong Profits Tax purposes for the eight month period ending 26th August, 2001 (i.e. immediately before the proposed "appointed day" for the merger). A copy of KPMG's advice is attached.

Stamp Duty

7. BEA and UCB fully intend to comply with all of their obligations under the Stamp Duty Ordinance (Cap.117) and, if required, an authentic copy of the Bill enacted as an Ordinance will be stamped with any stamp duty chargeable on the transfer and vesting of immovable property and Hong Kong stocks in accordance with section 4(8) of the Stamp Duty Ordinance. We do expect, however, that such transfer and vesting will fall within the exemption under section 45 of the Stamp Duty Ordinance, and BEA and UCB will apply for stamp duty relief accordingly.

Yours sincerely,

Michael Tropea/Jill Wong

c.c. - Alan Collins
The Bank of East Asia Limited
(fax: 2234 9664)

Mimi Kam
United Chinese Bank Limited
(fax: 2525 5815)

Mr. Ng Leung Sing
(fax: 2536 9821)

REPLY

This letter is provided solely for the above mentioned purpose and is not to be copied, quoted or referred to, in whole or in part, without our written consent. Should any third party obtain a copy without our written approval, we shall not accept any liabilities thereof.

Yours sincerely



Eric Tong
Partner

c c The Hon Ng Leung Sing

Tax losses opinion.doc

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TOTAL P.03

TOTAL P.09