

**President's ruling on  
The Bank of East Asia, Limited Bill  
proposed by Hon NG Leung-sing**

I have been requested by Hon NG Leung-sing to rule whether his proposed The Bank of East Asia, Limited Bill, which he intends to introduce into this Council, relates to the restrictions prescribed in Rule 51(3) and (4) of the Council's Rules of Procedure. Before making a ruling on the Bill, I have invited the Secretary for Financial Services (SFS) to offer his comments and Mr NG to offer his response. I have also sought the advice of Counsel to the Legislature.

**Rule 51(3) and (4) of the Rules of Procedure**

2. Rule 51(3) and (4) reads as follows:

"51(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government."

"51(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill."

**Purpose of the Bill**

3. The Bill seeks to provide for the merger of the Bank of East Asia, Limited (the BEA) with the United Chinese Bank Limited (the UCB).

**The Administration's views**

4. SFS is of the view that the Bill relates to Government's policies on bank merger, taxation, and control of tenancies.

(a) Bank merger

SFS advises that it is Government's policy to support consolidation of the banking sector in Hong Kong, which should improve its competitiveness and contribute to systemic

stability in the longer term. As part of this policy, the Administration tries to promote and facilitate bank mergers where reasonable proposals are submitted for consolidation. This is, however, always subject to the overriding aim to promote the stability of the banking system and to provide an appropriate degree of protection to depositors in the merged institutions and to depositors generally.

(b) Taxation

According to SFS, several clauses (in particular clause 8) of the Bill have the effect of deeming the surviving entity (i.e. the BEA) as one and the same as the UCB in law; and allowing any profits and losses of the UCB to be treated as the profits and losses of the BEA from the beginning of the financial year of the merger. The practical effect of these clauses is to override the provision in section 19C(4) of the Inland Revenue Ordinance (IRO) regarding prohibition of group loss relief, i.e. the tax relief available between a holding company and its wholly owned subsidiaries, and between wholly owned subsidiary companies, irrespective of whether ownership is direct or indirect. This can be achieved by allowing losses (either current or brought forward) of one or more group companies to be deducted from profits of other group companies.

SFS states that section 19C(4) of the IRO is a specific provision against loss set-off between separate corporations. The clear legal effect is that when a corporation is liquidated or ceases to exist upon merger, the loss it incurred would lapse. The Government's policy is to disallow group loss relief (as governed by section 19C(4) of IRO) unless it is specifically approved by law enacted by the Legislative Council and signed by the Chief Executive. The Bill, with its said provisions for group loss relief, thus relates to this policy.

(c) Control of tenancies

Under Clause 15(1)(a) of the Bill, the vesting and deemed vesting in the BEA of an interest in land by virtue of the enacted Ordinance shall not constitute an acquisition, assignment, transfer or parting with possession of that interest for the purposes of sections 53(4)(a) or 7(a), 119E(2) or 119H(1)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (LTCO).

SFS considers that this provision, if enacted, will have the effect of amending the application of those sections of LTCO referred to therein; the latter may otherwise apply but for the enactment of this provision. Hence, it relates to government policy as reflected in the said sections of LTCO.

### **Response from Hon NG Leung-sing**

5. Mr NG has informed me that he agrees to SFS's view.

### **Advice of Counsel to the Legislature**

6. Counsel to the Legislature advises that the three policies referred to in this Bill by SFS are the same as those referred to in the Administration's assessment of the proposed Bank of China (Hong Kong) Limited (Merger) Bill on which I have ruled. For the same reasons stated in his advice on that Bill, he is of the view that this Bill relates to Government policies.

### **My opinion**

7. Having considered the advice of Counsel to the Legislature in the light of SFS's views on the proposed Bill, and having regard to Mr NG's advice that he agrees to the Administration's views, I am satisfied that the Bill relates to Government's policies on the regulation of banks, the set-off of losses against profits of corporations, and the control of tenancies, as reflected in the relevant legislation.

### **Ruling**

8. I rule that The Bank of East Asia, Limited Bill relates to Government policy within the meaning of Rule 51(3) and (4) of the Rules of Procedure and requires the written consent of the Chief Executive for its introduction.

( Mrs Rita FAN )  
President  
Legislative Council

25 May 2001