

# **LEGISLATIVE COUNCIL BRIEF**

## **The Bank of East Asia, Limited (Merger) Bill**

### **INTRODUCTION**

The Chief Executive granted his consent for the Bill to be introduced before the Legislative Council on 21 November 2001. This Bill is introduced under Article 74 of the Basic Law by Legislative Council member, the Honourable Mr. Ng Leung Sing. The Bill was considered by the Financial Affairs Panel of the Legislative Council on 5 November 2001 and no objections to the Bill were raised.

### **BACKGROUND AND ARGUMENT**

2. The Bill provides for the merger of First Pacific Bank with the Bank of East Asia. In a number of jurisdictions, such as the United States, Japan and Switzerland, two banks can merge with one another by way of “universal succession”. However Hong Kong company law does not have such a concept as universal succession. Accordingly bank mergers in Hong Kong may only be effected either by transfer of all property and liabilities by way of novation or assignment or by introducing a Bill to the Legislative Council which transfers all property and liabilities of the merging bank which are governed by Hong Kong law. Given the large number of outstanding agreements between First Pacific Bank and its customers, it is not practical to transfer such assets and liabilities by way of novation and assignment to the Bank of East Asia.

3. The Government has stated that it supports the consolidation of the banking sector in Hong Kong, which should improve its competitiveness and contribute to systematic stability in the longer term. The Monetary Authority has no objection to the proposed merger being effected by way of a private bill such as the Bill.

4. The Bill has advantages for First Pacific Bank's customers. Customers will have the reassurance that all Hong Kong law governed property and liabilities of First Pacific Bank have been properly transferred to the Bank of East Asia. Customers will also not be inconvenienced by having to sign new customer documentation. Further, the basis of the transfer of the Hong Kong law governed property and liabilities between First Pacific Bank and the Bank of East Asia will be publicly known and uniform.

5. Since the early 1980s the Legislative Council has passed thirteen ordinances implementing mergers of banks and other authorised institutions. The Bill is based on the form of these previous bank merger ordinances enacted by the Legislative Council.

## **THE BILL**

6. The purpose of the Bill is to transfer the undertaking of First Pacific Bank of East Asia. Both banks are licensed under the Bank Ordinance and are incorporated in Hong Kong.

7. The Bill provides for the vesting of the undertaking of First Pacific Bank in the Bank of East Asia on the appointed day. The key provisions of the Bill are summarised in the following paragraphs.

8. **Clause 3** provides that the board of directors of First Pacific Bank may determine an appointed day upon which the merger will take effect and that such appointed day must be notified by both First Pacific Bank and the Bank of East Asia in the Gazette.

9. **Clause 4** provides that First Pacific Bank's name be changed and authorised capital reduced on the appointed day and banking licence be revoked on a day determined by the monetary Authority and notified in the Gazette.

10. **Clause 5** is the main transfer and vesting provision in the Bill. It provides that the undertaking of First Pacific Bank shall transfer to and vest in the Bank of East Asia as if the Bank of East Asia were the same person in law as First Pacific Bank upon the appointed day.

11. **Clause 6** deals with property which, before the merger, is held by First Pacific Bank in a capacity as a trustee. It provides that in such case, the relevant document should be read as if references to First Pacific Bank were references to the Bank of East Asia.

12. **Clause 7(a) to (k)** provides that all contracts and agreements made with, given to or by or addressed to First Pacific Bank shall, after the merger takes effect, be construed as if the Bank of East Asia had been the original party instead of First Pacific Bank and, accordingly, all references to First Pacific Bank must be construed as if they were to the Bank of East Asia. **Clause 7(a) to (k)** also provides for accounts, negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgements to be transferred to the Bank of East Asia upon the appointed day.

13. **Clause 7(1)** deals with data privacy issues under the Personal Data (privacy) Ordinance. It provides that the Privacy Commissioner may exercise in respect of the Bank of East Asia any power which he may, before the merger, have exercised in respect of First Pacific Bank. It also provides that the transfer of personal data from First Pacific Bank to the Bank of East Asia under the Bill shall not result in a breach of any duty of confidentiality or a contravention of the Personal Data (Privacy) Ordinance.

14. **Clause 8** provides for the accounting treatment of the Bank of East Asia following First Pacific Bank's merger with it.

15. **Clause 9** provides that all First Pacific Bank's contracts of employment with its employees shall be transferred to the Bank of East Asia at the merger but that such contracts shall be deemed for all purposes to be a single continuing employment. **Clause 9** also provides that no directors, secretary or auditor of First Pacific Bank shall, by

virtue of the merger only, automatically become a director, secretary or auditor of the Bank of East Asia.

16. **Clause 10** ensures that First Pacific Bank's pension fund scheme shall continue to operate but in respect of the Bank of East Asia not First Pacific Bank following the merger. It also ensures that former employees of First Pacific Bank and existing employees of East Asia shall continue to enjoy the same rights following the merger as before the merger under their respective pension fund schemes and that the merger shall not automatically bestow any additional entitlements to such employees.

17. **Clause 11** prevents the merger of First Pacific Bank with the Bank of East Asia constituting an event of default or a termination event in a contract or agreement to which any of First Pacific Bank or the Bank of East Asia or their respective subsidiaries is a party.

18. **Clauses 12 to 14** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against First Pacific Bank which, after the merger, becomes admissible in evidence in respect of the same matter for or against the Bank of East Asia, including for the purposes of the vesting, custody and control of banker's records under the Evidence Ordinance.

19. **Clause 15** deals with the effect of the merger on interests in land in Hong Kong held by First Pacific Bank and provides that the vesting of First Pacific Bank's interests in land in the Bank of East Asia pursuant to the merger does not constitute an acquisition, assignment, transfer or parting with possession under the Landlord and Tenant (Consolidation) Ordinance. **Clause 15** also provides that the vesting in Bank of East Asia of First Pacific Bank's interests in land under the merger will not affect or extinguish any priority under the Land Registration Ordinance.

20. **Clause 16** states that nothing in the Bill shall exempt either First Pacific Bank or the Bank of East Asia from any of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.

21. **Clause 17** provides that the Bill does not prevent the bank of East Asia amending its memorandum and articles of association or dealing with its property or business generally. **Clause 17** also provides that nothing in the Bill prevents First Pacific Bank doing the same before the merger.

22. **Clause 18** provides that nothing in the Bill once enacted shall affect the rights of the Central Authorities or the Government under the Basic Law and other laws.

### **LEGISLATIVE TIMETABLE**

23. The legislative timetable is as follows –

Financial Affairs Panel	5 November 2001
Publication in the Gazette for the first time	23 November 2001
Publication in the Gazette for the second time	30 November 2001
Member in charge of the Bill gives notice of intention to present the Bill to the Clerk of the Legislative Council	30 November 2001
First reading and commencement of Second Reading debate	5 December 2001
House Committee	7 December 2001
Resumption of Second Reading, Committee Stage and Third Reading	To be notified

## **ECONOMIC IMPLICATIONS**

24. The Bill facilitates the bank merger of First Pacific Bank with the Bank of East Asia. The consolidation of the banking sector in Hong Kong, such as that facilitated by the Bill, should improve its competitiveness and contribute to systematic stability in the longer term to the advantage of Hong Kong's economy.

## **PUBLIC CONSULTATION**

25. The Bill effects the merger of First Pacific Bank with the Bank of East Asia, which wholly owns First Pacific Bank. No public consultation has been conducted. However, each of the Financial Services Bureau, Department of Justice, Inland Revenue Department, Companies Registry, Securities and Futures Commission and Office of the Privacy Commissioner for Personal Data have reviewed and commented upon the Bill.

## **PUBLICITY**

26. The Bill was published in the Gazette on 23 and 30 November 2001 and notice of the Bill has been given by way of advertisements in the South China Morning Post and the Hong Kong Economic Times on 23 and 30 November 2001. In addition a press release will be issued by the Bank of East Asia.

## **ENQUIRY**

27. Enquiries on this Brief may be directed to the Honourable Mr. Ng Leung Sing at 2537 2536.

30 November 2001