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**Paper for the House Committee Meeting
of the Legislative Council
on 7 December 2001**

**Legal Service Division Report on
Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill**

(Private Member's Bill)

Object of the Bill

To provide for the vesting in The Fuji Bank, Limited ("Corporate Business Bank") of certain undertakings of The Dai-Ichi Kangyo Bank, Limited ("DKB") and The Industrial Bank of Japan, Limited ("IBJ") and for other related purposes.

LegCo Brief Reference

2. A LegCo Brief has been issued by Dr The Hon David LI Kwok-po, GBS, JP on 30 November 2001.

Date of First Reading

3. 5 December 2001.

Comments

Private Member's Bill

4. This is a private bill presented by Dr The Hon David LI Kwok-po, GBS, JP. According to the LegCo Brief, Corporate Business Bank, DKB and IBJ are banking corporations incorporated in Japan. They are the wholly-owned subsidiaries of Mizuho Holdings, Inc. and members of the Mizuho Financial Group. All three banks are licensed banks under the Banking Ordinance (Cap. 155) and each of them has a branch in Hong Kong.

5. According to the Preamble of the Bill, the three banks have entered into a consolidation agreement whereby their businesses are to be reorganized and consolidated by way of corporate split and merger procedures under the laws of Japan. Details of the consolidation are set out in paragraphs 4 to 16 and Annex A of the LegCo Brief.

6. The Bill makes provision for the vesting as well as the recognition of vesting of the undertakings of the Hong Kong branches of DKB and IBJ (collectively "the Consolidating Banks in Hong Kong") to and in Corporate Business Bank. According to the Brief, the Bill is necessary and desirable to facilitate the implementation of the consolidation in Hong Kong. It will cause minimum disruption to the operations of the three banks, their employees, customers and others who transact with the banks through their branches in Hong Kong.

7. The President has ruled that the Bill relates to Government policy within the meaning of Rule 51(4) of the Rules of Procedure and requires the written consent of the Chief Executive for its introduction. The policies that the Bill relates to are the regulation of banks, the set-off of losses against profits of corporations and the control of tenancies as reflected in the relevant legislation. By letter dated 30 November 2001, the Chief Executive gave consent for the Bill to be introduced into the Council. In accordance with Rule 54(1) of the Rules of Procedure, such written consent was signified by the Secretary for Financial Services before the Council entered upon consideration of the second reading of the Bill on 5 December 2001.

Monetary Authority's support of the proposed consolidation

8. At the meeting of the LegCo Panel on Financial Affairs on 5 November 2001 ("the Panel meeting"), the Administration welcomed the introduction of the Bill and advised that the Monetary Authority considered that the proposed consolidation would help promote stability of the banking sector.

Appointed day

9. The vesting of undertaking would take effect on the appointed day. Under Clause 3 of the Bill, Corporate Business Bank shall give notice in the Gazette of the appointed day, and such notice is not subsidiary legislation. At the Panel meeting, both the Member in charge of the Bill and the representative of Corporate Business Bank informed Members that the global re-organization and consolidation of the Mizuho Financial Group was scheduled to take effect on 1 April 2002.

10. On the appointed day, without further act or deed, Corporate Business Bank would succeed to DKB Hong Kong Branch and IBJ Hong Kong Branch as if in all respects Corporate Business Bank were the same person in law as DKB and IBJ. On the same day—

- (a) IBJ would be merged into Corporate Business Bank and dissolved under the laws of Japan;
- (b) the name of Corporate Business Bank would be changed to Mizuho Corporate Bank, Ltd. under the laws of Japan;
- (c) the name of DKB would be changed to Mizuho Bank, Ltd. under the laws of Japan and DKB would cease to carry on banking business in Hong Kong.

Baker and McKenzie, solicitors for the three banks have confirmed that application would be made for the banking licences of DKB and IBJ to be revoked on the appointed day in accordance with Part V of the Banking Ordinance. Steps would also be taken to comply with the requirements in relation to companies incorporated outside Hong Kong under Part XI of the Companies Ordinance (Cap. 32).

Security interest

11. The remaining parts of the Bill are supplementary provisions that are similar to existing provisions in Bank of China (Hong Kong) Limited (Merger) Ordinance (25 of 2001) and The Bank of East Asia, Limited Ordinance (26 of 2001), both enacted in July 2001. In particular, Clause 6(g)(v) and (vi) follows closely the relevant provisions in the two said Ordinances to ensure that the liability of persons providing security interest to Corporate Business Bank or the Consolidating Banks in Hong Kong would not be increased or expanded by virtue of the Bill unless —

- (a) the terms of such security interest expressly provide otherwise;
- (b) Corporate Business Bank obtains the written consent of the persons who granted such security interest; or
- (c) such security interest arises at general law.

Personal Data (Privacy) Ordinance

12. Under Clause 6(l), it is proposed that the transfer to and vesting in Corporate Business Bank of the undertaking of the Consolidating Banks in Hong Kong, and any disclosure to Corporate Business Bank of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which the Consolidating Banks in Hong Kong are subject immediately before the appointed day or to a contravention by Corporate Business Bank or the Consolidating Banks in Hong Kong of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) or the data protection principles. At the Panel meeting, the Administration agreed in principle that legislative amendments should be made to introduce exemption provisions to the PDPO regarding the transfer of personal data in acquisition or merger activities, but it would be unlikely that PDPO be amended before 1 April 2002.

Contracts of employment and benefits

13. Clause 7 of the Bill deems for all purposes employment with a Consolidating Bank in Hong Kong and Corporate Business Bank under a contract for the employment of any person by a Consolidating Bank in Hong Kong to be a single continuing employment, with the exception of the directors and auditors of the Consolidating Banks in Hong Kong. Clause 8 relates to the pension fund schemes and provident fund schemes established in Hong Kong and the gratuity benefits payable by the Consolidating Banks in Hong Kong and Corporate Business Bank. At the Panel meeting, Members noted that a total of 550 staff were being employed by the Hong Kong branches of Corporate Business Bank, DKB and IBJ. Of these, about 60 to 70 were staff deployed from Japan, and the rest recruited in Hong Kong. Members were advised that Corporate Business Bank did not have plans to lay off staff after the proposed consolidation took effect.

Taxation

14. Clauses 15 and 16 of the Bill relate to the accounting treatment of the Consolidating Banks in Hong Kong and Corporate Business Bank. Both clauses are similar to the relevant provisions in Bank of China (Hong Kong) Limited (Merger) Ordinance. Under Clause 16(1), Corporate Business Bank would be treated on and from the appointed day as if it were the continuation of and the same person in law as the Consolidating Banks in Hong Kong for the purposes of the Inland Revenue Ordinance (Cap. 112). By virtue of this provision, Corporate Business Bank would be able to qualify under section 19C(4) of the Inland Revenue Ordinance to claim set-off of loss which may have been incurred by Consolidating Banks in Hong Kong against the profits of Corporate Business Bank. The effect of the Bill is such that the three banks would not achieve any benefits in respect of carry forward of losses beyond those which have been granted in relation to previous bank mergers, and in accordance with stated government policy.

Savings clauses

15. Clause 17 of the Bill provides that nothing in the Bill shall exempt DKB or IBJ or Corporate Business Bank or their subsidiaries from the provisions of any enactment regulating the carrying on of the business of any of them. This means that the passage of the Bill would not exempt Corporate Business Bank or DKB or IBJ from obtaining the necessary approvals or consent from the Monetary Authority under the Banking Ordinance, or exempt the three banks from complying with the Companies Ordinance.

16. Clause 19 of the Bill follows the requirement under Rule 50(8) of the Rules of Procedure. It provides that nothing in the Bill 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 the Bill and those claiming by, from or under them.

Committee Stage amendments

17. At our suggestion, the Member in charge has agreed to move a Committee Stage amendment on resumption of the Second Reading debate of the Bill. The proposed amendment improves the Chinese text of Clause 2(2) of the Bill to clarify the legal effect of that clause and is technical in nature. A copy of the draft Committee Stage amendment is at the **Annex**.

Public Consultation

18. No public consultation has been carried out. According to paragraph 42 of the LegCo Brief, the Bill has been approved by the Hong Kong Monetary Authority and circulated to the Department of Justice and other relevant Government departments and bureaux through the Financial Services Bureau.

Consultation with the LegCo Panel

19. Members of the LegCo Panel on Financial Affairs have been briefed on the Bill at the meeting on 5 November 2001. Relevant information given at the briefing are set out in paragraphs 8, 9 and 12 above.

Conclusion

20. With the proposed Committee Stage amendment, the Bill is legally in order. Subject to Members' views, the Bill is ready for resumption of the Second Reading debate.

Encl

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MIZUHO CORPORATE BANK, LTD. (HONG KONG CONSOLIDATION) BILL

COMMITTEE STAGE

Amendments to be moved by Dr. The Hon David Li Kwok-po, GBS, JP

Clause

Amendment Proposed

- 2(2) By deleting everything after “(視屬何情況而定)” and substituting “各有關的合併銀行在香港經營業務的所有地方。”.