

Information Note
Legislative Council Panel on Financial Affairs
Meeting on 9 April 2002
CITIC Ka Wah Bank Limited (Merger) Bill

Introduction

1. This note seeks to inform Members regarding CITIC Ka Wah Bank Limited (Merger) Bill and to solicit Members' views.

General

2. It is proposed that the Bill is introduced as a private Member's bill. The Bill is sponsored by The Hon. Dr. David Li Kwok-po, GBS, JP. The Bill relates to bank merger and so the Administration will be requested to give its view as to whether the Bill relates to Government policies for the purpose of Article 74 of the Basic Law. The Chief Executive will be asked to consent for the Bill to be introduced into the Legislative Council.

Bank Merger

3. The Bill provides for the merger of CITIC Ka Wah Bank Limited ("**CITIC Ka Wah Bank**") with its wholly-owned subsidiary, The Hong Kong Chinese Bank, Limited ("**Hongkong Chinese Bank**"). The intention of the merger is to allow CITIC Ka Wah Bank to consolidate its banking business in Hongkong Chinese Bank and to permit CITIC Ka Wah Bank to become a financial holding company on the consequent revocation by the HKMA of its banking licence.

4. 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 CITIC Ka Wah Bank and its customers, it is not practical to transfer such assets and liabilities by way of novation and assignment to Hongkong Chinese Bank.

5. It is the Government's stated 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 has previously supported 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.

6. As regards this particular case, the proposed merger will help promote stability of the banking sector.

The Bill

7. The purpose of the Bill is to transfer the undertaking of CITIC Ka Wah Bank to Hongkong Chinese Bank. Both banks are licensed under the Banking Ordinance and are incorporated in Hong Kong. At the merger CITIC Ka Wah Bank will cease to be a bank and, remaining listed on The Stock Exchange of Hong Kong Limited, will become a financial holding company.

8. The Bill provides for the vesting of the undertaking of CITIC Ka Wah Bank in Hongkong Chinese Bank on the appointed day. By excluding certain assets and liabilities, essentially only the banking business of CITIC Ka Wah Bank will form part of the undertaking vested in Hongkong Chinese Bank by the Bill. The key provisions of the Bill are summarised in the following paragraphs.

9. **Clause 3** provides that the board of directors of CITIC Ka Wah Bank may determine an appointed day upon which the merger will take effect and that

such appointed day must be notified by both CITIC Ka Wah Bank and Hongkong Chinese Bank in the Gazette.

10. **Clause 4** provides that CITIC Ka Wah Bank's name be changed to "CITIC International Financial Holdings Limited 中信國際金融控股有限公司" and Hongkong Chinese Bank's name be changed to "CITIC Ka Wah Bank Limited 中信嘉華銀行有限公司" on the appointed day, and CITIC Ka Wah Bank's banking licence be revoked on a day determined by the HKMA and notified in the Gazette.

11. **Clause 5** is the main transfer and vesting provision in the Bill. It provides that the undertaking of CITIC Ka Wah Bank (not including the "excluded assets and liabilities") shall transfer to and vest in Hongkong Chinese Bank as if Hongkong Chinese Bank were the same person in law as CITIC Ka Wah Bank upon the appointed day.

12. **Clause 6** deals with property which, before the merger, is held by CITIC Ka Wah Bank in a capacity as a trustee. It provides that in such case, the relevant document should be read as if references to CITIC Ka Wah Bank were references to Hongkong Chinese Bank.

13. **Clause 7(a) to (k)** provides that all contracts and agreements made with, given to or by or addressed to CITIC Ka Wah Bank (other than where excluded property and liabilities) shall, after the merger takes effect, be construed as if Hongkong Chinese Bank had been the original party instead of CITIC Ka Wah Bank and, accordingly, all references to CITIC Ka Wah Bank must be construed as if they were to Hongkong Chinese Bank. **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 Hongkong Chinese Bank upon the appointed day. **Clauses 7(g)(v) and (vi)** are provisions which seek to reflect previous concerns in respect of other bank mergers (raised by the Hon. Mr Albert Ho Chun-yan) regarding the possible increase of security or charges over customers' assets as a result of the merger. These provisions seek to ensure that Hongkong Chinese Bank's existing charges and security interests will

not be expanded over assets previously held by CITIC Ka Wah Bank of a common Hongkong Chinese Bank/ CITIC Ka Wah Bank customer.

14. **Clause 7(I)** deals with data privacy issues under the Personal Data (Privacy) Ordinance. It provides that the Privacy Commissioner may exercise in respect of Hongkong Chinese Bank any power which he may, before the merger, have exercised in respect of CITIC Ka Wah Bank. It also provides that the transfer of personal data from CITIC Ka Wah Bank to Hongkong Chinese Bank under the Bill shall not result in a breach of any duty of confidentiality or a contravention of the Personal Data (Privacy) Ordinance.

15. **Clause 8** provides for the accounting treatment of Hongkong Chinese Bank following the transfer of CITIC Ka Wah Bank's undertaking to it. It provides that the balance sheets and profit and loss accounts of CITIC Ka Wah Bank and Hongkong Chinese Bank for the accounting period of each company in which the appointed day falls shall be prepared in all respects as if the undertaking had vested in Hongkong Chinese Bank on the first day of such accounting period of Hongkong Chinese Bank.

16. **Clause 9** provides for the taxation arrangements following the transfer of the undertaking of CITIC Ka Wah Bank to Hongkong Chinese Bank. **Clause 9** also provides that only a single profits tax computation shall be prepared by Hongkong Chinese Bank in respect of the profits and losses of CITIC Ka Wah Bank and Hongkong Chinese Bank in respect of the year of assessment the basis period for which the transfer of the undertaking takes place. **Clause 9** is intended to have similar effect as the provisions dealing with taxation matters in previous bank merger ordinances. The effect of this provision is consistent with Government policy on taxation, as stated in the context of recently enacted bank merger ordinances.

17. **Clause 10** provides that, in respect of all CITIC Ka Wah Bank's contracts of employment with those employees who are transferred by the Bill to Hongkong Chinese Bank at the merger, such contracts shall be deemed for all purposes to be a single continuing employment. **Clause 10** also provides that no directors, secretary or auditor of CITIC Ka Wah Bank shall, by virtue of the

merger only, automatically become a director, secretary or auditor of Hongkong Chinese Bank.

18. **Clause 11** ensures that CITIC Ka Wah Bank employees who are members of pension fund schemes of CITIC Ka Wah Bank shall continue to be members of these schemes after the transfer of CITIC Ka Wah Bank's undertaking to Hongkong Chinese Bank. It also ensures that former employees of CITIC Ka Wah Bank and existing employees of Hongkong Chinese Bank shall continue to enjoy the same rights following the transfer as before under their respective pension schemes and that the transfer by virtue of the Bill shall not automatically bestow any additional entitlements to such employees.

19. **Clause 12** prevents the merger of CITIC Ka Wah Bank with Hongkong Chinese Bank constituting an event of default or a termination event in a contract or agreement to which any of CITIC Ka Wah Bank or Hongkong Chinese Bank or their respective subsidiaries is a party.

20. **Clauses 13 to 15** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against CITIC Ka Wah Bank which, transferred by the Bill, becomes admissible in evidence after the merger in respect of the same matter for or against Hongkong Chinese Bank, including for the purposes of the vesting, custody and control of banker's records under the Evidence Ordinance.

21. **Clause 16** deals with the effect of the merger on interests in land in Hong Kong held by CITIC Ka Wah Bank and provides that the vesting of CITIC Ka Wah Bank's interests in land in Hongkong Chinese Bank pursuant to the merger does not constitute an acquisition, assignment, transfer or parting with possession under the Landlord and Tenant (Consolidation) Ordinance. **Clause 16** also provides that the vesting in Hongkong Chinese Bank of CITIC Ka Wah Bank's interests in land under the merger will not affect or extinguish any priority under the Land Registration Ordinance. For the avoidance of doubt, the Bill states that nothing in **Clause 16** exempts either Hongkong Chinese Bank or CITIC Ka Wah Bank from the provisions of the Stamp Duty Ordinance.

22. **Clause 17** states that nothing in the Bill shall exempt either CITIC Ka Wah Bank or Hongkong Chinese Bank from any of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.

23. **Clause 18** provides that the Bill does not prevent Hongkong Chinese Bank amending its memorandum and articles of association or dealing with its property or business generally. **Clause 18** also provides that nothing in the Bill prevents CITIC Ka Wah Bank altering its memorandum and articles of association or dealing with its property generally before the appointed day.

24. **Clause 19** 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.

The Hon. Dr. David Li Kwok-po, GBS, JP

28 March 2002