

CITIC KA WAH BANK LIMITED
(MERGER) BILL

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A BILL

To

Provide for the vesting in The Hong Kong Chinese Bank, Limited of the undertaking of CITIC Ka Wah Bank Limited and for other related purposes.

Preamble

WHEREAS -

- (a) CITIC Ka Wah Bank Limited 中信嘉華銀行有限公司 (hereinafter called "CITIC Ka Wah Bank") is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank licensed under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong and elsewhere;
- (b) The Hong Kong Chinese Bank, Limited (香港華人銀行有限公司) (hereinafter called "Hongkong Chinese Bank") is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank licensed under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong;
- (c) Hongkong Chinese Bank is a wholly owned subsidiary of CITIC Ka Wah Bank;
- (d) for the better conduct of the business of CITIC Ka Wah Bank and Hongkong Chinese Bank, it is expedient that their respective undertakings be merged and that such merger should occur by means of a transfer of the undertaking of CITIC Ka Wah Bank to Hongkong Chinese Bank; and
- (e) in view of the extent of the contractual and other legal relationships affecting the conduct of the undertaking of CITIC Ka Wah Bank, it is expedient that the said undertaking be transferred to Hongkong Chinese Bank by this Ordinance without interference with the conduct and continuity of the respective businesses of CITIC Ka Wah Bank and Hongkong Chinese Bank.

Enacted by the Legislative Council.

1. **Short title**

This Ordinance may be cited as the CITIC Ka Wah Bank Limited (Merger) Ordinance.

2. Interpretation

(1) In this Ordinance, unless the subject or context otherwise requires -

"appointed day" (指定日期) means such day as may be appointed pursuant to section 3;

"CITIC Ka Wah Bank" (中信嘉華銀行) means CITIC Ka Wah Bank Limited
中信嘉華銀行有限公司;

"customer" (客戶) means any person having a banking account or other dealing, transaction or arrangement with CITIC Ka Wah Bank;

"data protection principles" (保障資料原則) means the data protection principles set out in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486);

"excluded property and liabilities" (除外財產及法律責任) means -

- (a) the common seal of CITIC Ka Wah Bank;
- (b) documents (other than accounting records) required to be kept by CITIC Ka Wah Bank pursuant to the Companies Ordinance (Cap. 32);
- (c) the issued share capital of Hongkong Chinese Bank represented by the paid-up shares beneficially owned by CITIC Ka Wah Bank;
- (d) subject to the agreement of Hongkong Chinese Bank, such other property and liabilities of CITIC Ka Wah Bank as may on or before the appointed day be specified by way of a resolution or resolutions of the board of directors of CITIC Ka Wah Bank;

"existing" (現有) means existing, outstanding or in force immediately before the appointed day;

"Hongkong Chinese Bank" (香港華人銀行) means The Hong Kong Chinese Bank, Limited
(香港華人銀行有限公司);

"liabilities" (法律責任) includes duties and obligations of every description (whether present or future, actual or contingent);

"Privacy Commissioner" (私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap. 486);

"property" (財產) means property and assets of every description wheresoever situate and rights of every description (whether present or future, actual or contingent), and includes property held on trust or in a fiduciary capacity and security interests, benefits and powers of every description;

"Registrar of Companies" (公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32);

"security interest" (抵押權益) includes a mortgage or charge (whether legal or equitable and including any sub-mortgage), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment by way of security, indemnity, right of set-off, flawed asset arrangement, agreement or undertaking (whether in writing or not) or other means (in each case made, granted, arising or subsisting under any applicable law) of securing payment or discharge of a debt or liability (whether present or future, actual or contingent);

"undertaking" (業務) means the business and all existing property, reserves and liabilities of CITIC Ka Wah Bank of whatsoever nature other than the excluded property and liabilities;

"will" (遺囑) includes a codicil and any other testamentary writing.

(2) Any reference in this Ordinance to property or liabilities of CITIC Ka Wah Bank is a reference to property or liabilities to which CITIC Ka Wah Bank is for the time being entitled or subject (whether beneficially or in any fiduciary capacity), wherever such property or liabilities are situated or arise and whether or not capable of being transferred or assigned by CITIC Ka Wah Bank, and whether CITIC Ka Wah Bank is entitled to such property or subject to such liabilities under the laws of Hong Kong or under the laws of any country, territory or place outside Hong Kong.

(3) Any body politic or corporate and any other person or persons whose rights are affected by any of the provisions of this Ordinance shall be deemed to be mentioned herein.

3. Notice of appointed day

(1) The directors of CITIC Ka Wah Bank may appoint a day for the purposes of this Ordinance.

(2) CITIC Ka Wah Bank and Hongkong Chinese Bank shall give joint notice in the Gazette stating the day so appointed save that, in the event that such day proves not to be the appointed day for any reason, CITIC Ka Wah Bank and Hongkong Chinese Bank shall give joint notice in the Gazette to that effect and shall again give joint notice in the Gazette stating the next day so appointed or, as the case may be, the day which was the appointed day.

4. Changes of name and revocation of banking licence

(1) On the appointed day, by virtue of this Ordinance -

(a) the name of CITIC Ka Wah Bank shall, in accordance with this section, be changed to "CITIC International Financial Holdings Limited 中信國際金融控股有限公司";

- (b) the name of Hongkong Chinese Bank shall, in accordance with this section, be changed to "CITIC Ka Wah Bank Limited 中信嘉華銀行有限公司"; and
- (c) the banking licence of CITIC Ka Wah Bank shall, in accordance with Part V of the Banking Ordinance (Cap. 155), be revoked on and from a day to be appointed by the Monetary Authority which day shall be published in the Gazette.

(2) Not later than 7 days before the appointed day, CITIC Ka Wah Bank shall deliver to the Registrar of Companies a copy of this Ordinance.

(3) The Registrar of Companies shall, pursuant to this Ordinance, register the copy of the Ordinance delivered to him pursuant to subsection (2) and on the appointed day -

- (a) shall enter the new name of CITIC Ka Wah Bank in the register in place of its former name and issue to CITIC Ka Wah Bank a certificate of incorporation on change of name stating CITIC Ka Wah Bank's new name; and
- (b) shall enter the new name of Hongkong Chinese Bank in the register in place of its former name and issue to Hongkong Chinese Bank a certificate of incorporation on change of name stating Hongkong Chinese Bank's new name.

5. Vesting of the undertaking in Hongkong Chinese Bank

(1) On the appointed day the undertaking shall, by virtue of this Ordinance and without further act or deed, be transferred to, and vest in, Hongkong Chinese Bank to the intent that Hongkong Chinese Bank shall succeed to the whole undertaking as if in all respects Hongkong Chinese Bank were the same person in law as CITIC Ka Wah Bank.

(2) Where the transfer and vesting of any property and liabilities situate in any country, territory or place outside Hong Kong and forming part of the undertaking is governed otherwise than by the laws of Hong Kong, CITIC Ka Wah Bank shall, if Hongkong Chinese Bank so requires, so soon as is practicable after the appointed day, take all necessary steps for securing the effective transfer and vesting thereof in Hongkong Chinese Bank and, pending such transfer and vesting, CITIC Ka Wah Bank shall hold any such property in trust absolutely for Hongkong Chinese Bank.

6. Trust property and wills

(1) Any property vested in Hongkong Chinese Bank by virtue of this Ordinance which immediately before the appointed day was held by CITIC Ka Wah Bank, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement, will or other instrument (whether originally so appointed or not, and

whether appointed under hand or seal, or by order of any court or otherwise), or as executor of the will, or administrator of the estate, of a deceased person or as judicial trustee appointed by order of any court, or in any other fiduciary capacity, shall, on and from the appointed day, be held by Hongkong Chinese Bank alone or, as the case may be, jointly with such other person, in the same capacity upon the trusts, and with and subject to the powers, provisions and liabilities, applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property forming part of the undertaking became vested in CITIC Ka Wah Bank, in any such fiduciary capacity as is referred to in subsection (1) (including in the case of a will any grant of probate thereof), and any provision in such instrument or order, or any existing contract or arrangement, for the payment to, or retention by, CITIC Ka Wah Bank of remuneration for its services in any such fiduciary capacity, shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to CITIC Ka Wah Bank not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, CITIC Ka Wah Bank, there were substituted a reference to Hongkong Chinese Bank provided always that this subsection shall not prevent Hongkong Chinese Bank from varying the remuneration or scale of fees payable in accordance with the terms of the relevant instrument or order.

(3) Any will made before the appointed day which has not been proved in Hong Kong before the appointed day, and any will made on or after the appointed day, being a will forming part of the undertaking which appoints CITIC Ka Wah Bank to be an executor, trustee or recipient of any property as trustee, shall, on and from the appointed day, be construed and have effect as if for any reference therein to CITIC Ka Wah Bank as such executor, trustee or recipient or otherwise in connection with such appointment, not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, CITIC Ka Wah Bank, there were substituted a reference to Hongkong Chinese Bank.

(4) No testamentary gift shall be adeemed by reason only of the operation of any of the provisions of this Ordinance.

7. Supplementary provisions

Without prejudice to the generality of any other provision of this Ordinance but subject to any provision of this Ordinance to the contrary effect, the following provisions of this section shall have effect other than in relation to the excluded property and liabilities -

- (a) All existing contracts, agreements, insurance policies, options, novations, certificates, awards, land grants, conveyances, deeds, leases, licences, notices, permits, guarantees, documents granting or comprising any security interest, bonds, indemnities, mandates, instructions and other instruments and undertakings entered into by, made with, given to or by or addressed to CITIC Ka Wah Bank (whether alone or with any other person and whether as principal or

agent and whether in writing or not), shall be construed and have effect on and from the appointed day as if -

- (i) Hongkong Chinese Bank had been a party thereto instead of CITIC Ka Wah Bank;
 - (ii) for any reference (however worded and whether express or implied) to CITIC Ka Wah Bank there were substituted, as respects anything falling to be done on or after the appointed day, a reference to Hongkong Chinese Bank; and
 - (iii) any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of CITIC Ka Wah Bank were, as respects anything falling to be done on or after the appointed day, a reference to the directors of Hongkong Chinese Bank or, as the case may require, to such director, officer or employee of Hongkong Chinese Bank as Hongkong Chinese Bank may appoint for that purpose or, in default of appointment, to the director, officer or employee of Hongkong Chinese Bank who corresponds as nearly as may be to the first-mentioned director, officer or employee.
- (b) Paragraph (a)(ii) shall, subject to the provisions of section 17, apply to any statutory provision, to any provision of any existing contract to which CITIC Ka Wah Bank was not a party and to any provision of any other existing document (not being a contract or a will) as they apply to a contract to which that paragraph applies.
- (c) Any account between CITIC Ka Wah Bank and a customer shall, on the appointed day, be transferred to Hongkong Chinese Bank and become an account between Hongkong Chinese Bank and such customer subject to the same conditions and incidents as theretofore; and such account shall be deemed for all purposes to be a single continuing account; and any existing contracts, agreements, insurance policies, options, novations, certificates, awards, land grants, conveyances, deeds, leases, licences, notices, permits, guarantees, documents granting or comprising any security interest, bonds, indemnities, mandates, instructions and other instruments and undertakings entered into by, made with, given to or by or addressed to CITIC Ka Wah Bank (whether alone or with any other person and whether as principal or agent and whether in writing or not), shall be construed and have effect on and from the appointed day as if any reference (however worded and whether express or implied) to such account between CITIC Ka Wah Bank and a customer there were substituted, as respects anything falling to be done on or after the

appointed day, and so far as the context permits, a reference to the continuing account between Hongkong Chinese Bank and such customer:

Provided that nothing in this Ordinance shall affect any right of Hongkong Chinese Bank or of any customer to vary the conditions or incidents subject to which any account is kept.

- (d) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent (whether in writing or not and whether or not in relation to an account) given to or by CITIC Ka Wah Bank, either alone or jointly with another person, shall apply and have effect, on and from the appointed day, as if given to or by Hongkong Chinese Bank or, as the case may be, to or by Hongkong Chinese Bank jointly with such other person.
- (e) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, CITIC Ka Wah Bank, or payable at any place of business of CITIC Ka Wah Bank, whether so drawn, given, accepted or endorsed before, on or after the appointed day, shall have the same effect on and from the appointed day, as if it had been drawn on, or given to, or accepted or endorsed by Hongkong Chinese Bank, or were payable at the same place of business of Hongkong Chinese Bank.
- (f) The custody of any document or record, goods or other thing held by CITIC Ka Wah Bank as bailee shall pass to Hongkong Chinese Bank on the appointed day, and the rights and obligations of CITIC Ka Wah Bank under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of Hongkong Chinese Bank.
- (g)
 - (i) Any security interest held immediately before the appointed day by CITIC Ka Wah Bank, or by a nominee or agent of or trustee for CITIC Ka Wah Bank, as security for the payment or discharge of any liability shall, on and from the appointed day, be held by, or, as the case may require, by that nominee, agent or trustee for, Hongkong Chinese Bank, and be available to Hongkong Chinese Bank (whether for its own benefit or for the benefit of any other person) as security for the payment or discharge of that liability.
 - (ii) In relation to any security interest vested or deemed to be vested in Hongkong Chinese Bank in accordance with the provisions of this Ordinance and any liability thereby secured, Hongkong Chinese Bank shall be entitled to the rights and

priorities and be subject to the obligations and incidents to which CITIC Ka Wah Bank would have been entitled and subject if it had continued to hold the security interest.

- (iii) Without prejudice to the generality of subparagraph (ii), in any case where any existing liability subsists between CITIC Ka Wah Bank and Hongkong Chinese Bank in respect of which CITIC Ka Wah Bank or Hongkong Chinese Bank, or a nominee or agent of or trustee for CITIC Ka Wah Bank or Hongkong Chinese Bank holds a security interest, that liability shall, for the purpose of enforcing or realizing that security interest, be deemed to continue in effect notwithstanding the vesting of the undertaking in Hongkong Chinese Bank.
- (iv) Any security interest referred to in subparagraph (i), (ii) or (iii) and which extends to future advances or liabilities shall, on and from the appointed day, be available to Hongkong Chinese Bank (whether for its own benefit or for the benefit of any other person) as security for the payment or discharge of future advances and liabilities to the same extent and in the same manner in all respects as future advances by, or liabilities to, CITIC Ka Wah Bank or Hongkong Chinese Bank were secured thereby immediately before that day.
- (v) Notwithstanding subparagraph (i), where immediately before the appointed day any security interest would not be available to Hongkong Chinese Bank as security for the payment or discharge of any liability owing to it, or to CITIC Ka Wah Bank as security for the payment or discharge of any liability owing to it, such security interest shall not become available to Hongkong Chinese Bank as security for such liability on and from the appointed day by virtue of this Ordinance, unless -
 - (A) the terms of such security interest expressly provide otherwise;
 - (B) Hongkong Chinese Bank obtains the written consent of the person or persons who granted such security interest; or
 - (C) such security interest arises at general law.
- (vi) Notwithstanding subparagraph (ii), where immediately before the appointed day, Hongkong Chinese Bank would not, in respect of any liability owing to it, be entitled to the rights and priorities in relation to any security interest then in existence,

or CITIC Ka Wah Bank would not, in respect of any liability owing to it, be entitled to the rights and priorities in relation to any security interest then in existence, Hongkong Chinese Bank shall not, in respect of such liability, be entitled to such rights and priorities on and from the appointed day by virtue of this Ordinance, unless -

- (A) the terms of such security interest expressly provide otherwise;
 - (B) Hongkong Chinese Bank obtains the written consent of the person or persons who granted such security interest; or
 - (C) such security interest arises at general law.
- (h) (i) Where by virtue of this Ordinance any right or liability of CITIC Ka Wah Bank becomes or is deemed to become a right or liability of Hongkong Chinese Bank, Hongkong Chinese Bank and all other persons shall, on and from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that right or liability as if it had at all times been a right or liability of Hongkong Chinese Bank; and any legal proceedings or application to any authority existing or pending immediately before the appointed day by or against CITIC Ka Wah Bank may be continued by or against Hongkong Chinese Bank.
- (ii) Where any right or liability of CITIC Ka Wah Bank was before the appointed day the subject of arbitral proceedings to which CITIC Ka Wah Bank was a party, Hongkong Chinese Bank shall on and from the appointed day automatically be substituted for CITIC Ka Wah Bank as a party to those proceedings, without the need for consent from any other party or from the arbitrator.
- (i) Any judgment or award obtained by or against CITIC Ka Wah Bank and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against CITIC Ka Wah Bank, become enforceable by or against Hongkong Chinese Bank.
- (j) Any court order which applies to CITIC Ka Wah Bank shall on and from the appointed day apply to Hongkong Chinese Bank instead of to CITIC Ka Wah Bank.

- (k) Nothing in this Ordinance shall terminate or prejudicially affect the appointment, authority, rights or powers of any receiver or of any receiver and manager appointed by CITIC Ka Wah Bank, whether alone or with others, before the appointed day.
- (l) The Privacy Commissioner may, on and from the appointed day, exercise in respect of Hongkong Chinese Bank any power under the Personal Data (Privacy) Ordinance (Cap. 486) which he could have immediately before the appointed day exercised in respect of CITIC Ka Wah Bank in respect of a breach or alleged breach by CITIC Ka Wah Bank of that Ordinance or the data protection principles; but the transfer to, and vesting in, Hongkong Chinese Bank by this Ordinance of the undertaking of CITIC Ka Wah Bank and any disclosure to Hongkong Chinese Bank of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which CITIC Ka Wah Bank is subject immediately before the appointed day or to a contravention by Hongkong Chinese Bank or CITIC Ka Wah Bank of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

8. Accounting treatment of CITIC Ka Wah Bank and Hongkong Chinese Bank

(1) On and from the appointed day, by virtue of this Ordinance and notwithstanding the provisions of any other Ordinance -

- (a) 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 pursuant to section 5 on the first day of such accounting period of Hongkong Chinese Bank;
- (b) all property and liabilities of CITIC Ka Wah Bank (other than excluded property and liabilities) shall be transferred to Hongkong Chinese Bank at their carrying value in the accounts of CITIC Ka Wah Bank on the first day of such accounting period of Hongkong Chinese Bank;
- (c) each existing reserve of CITIC Ka Wah Bank relating to the property and liabilities vested in Hongkong Chinese Bank by virtue of this Ordinance as reflected in the accounts of CITIC Ka Wah Bank on the first day of such accounting period of Hongkong Chinese Bank shall be transferred to and for all purposes be and become a reserve of Hongkong Chinese Bank; and

- (d) the amount, description and character of every reserve of Hongkong Chinese Bank which shall come into being pursuant to paragraph (c) shall be the same in all respects as those of the corresponding existing reserve of CITIC Ka Wah Bank immediately before the first day of such accounting period of Hongkong Chinese Bank, and all enactments and rules of law shall apply to or in respect of every such reserve of Hongkong Chinese Bank in the same manner in all respects as they applied to or in respect of the corresponding existing reserve of CITIC Ka Wah Bank immediately before the first day of such accounting period of Hongkong Chinese Bank.

(2) Every reference in subsection (1) to an existing reserve shall include a reference to any reserve or similar provision, irrespective of its name or designation (and whether the amount thereof be positive or negative in nature) and, without prejudice to the generality of the foregoing, every such reference shall include a reference to any sums standing to the credit (or debit) of any profit and loss account.

(3) Without prejudice to the generality of subsection (1), any profits or losses of CITIC Ka Wah Bank earned or incurred after the beginning of the financial year of CITIC Ka Wah Bank in which the appointed day shall occur, shall on and from the appointed day, by virtue of this Ordinance, be treated for all purposes as profits or, as the case may be, losses, of Hongkong Chinese Bank.

9. Taxation and revenue matters

(1) For the purposes of the Inland Revenue Ordinance (Cap. 112), on and from the appointed day Hongkong Chinese Bank shall be treated as if it were the continuation of and the same person in law with regard to the undertaking as CITIC Ka Wah Bank.

(2) Accordingly (and without affecting the generality of subsection (1)) -

- (a) a vesting or deemed vesting in Hongkong Chinese Bank of any property or liabilities by virtue of this Ordinance does not constitute a sale or other disposal of or a change in the nature of that property or the liability for any purpose under the Inland Revenue Ordinance (Cap. 112);
- (b) the aggregate amount of any losses sustained by CITIC Ka Wah Bank which are capable of but have not been carried forward and set off against assessable profits of CITIC Ka Wah Bank for the purposes of section 19C of the Inland Revenue Ordinance (Cap. 112) as at the end of the last complete financial year of CITIC Ka Wah Bank are deemed to be losses of Hongkong Chinese Bank and, accordingly, available for set off against the assessable profits of Hongkong Chinese Bank (or Hongkong Chinese Bank's share of assessable profits of a

partnership in which it is a partner) for the purposes of that Ordinance.

(3) The profits or losses of CITIC Ka Wah Bank treated as profits or losses of Hongkong Chinese Bank in accordance with section 8(3) -

- (a) shall not be taken into account for the purpose of computing the profits and losses of CITIC Ka Wah Bank which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for any year of assessment; and
- (b) shall be taken into account for the purpose of computing the profits or losses of Hongkong Chinese Bank which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for the year of assessment the basis period for which includes the appointed day.

10. Contracts of employment

(1) Section 7(a) shall apply to a contract for the employment of any person by CITIC Ka Wah Bank and employment with CITIC Ka Wah Bank and Hongkong Chinese Bank under any such contract shall be deemed for all purposes to be a single continuing employment.

(2) No director, secretary or auditor of CITIC Ka Wah Bank shall by virtue only of this Ordinance become a director, secretary or auditor, as the case may be, of Hongkong Chinese Bank.

11. Pensions, provident funds and gratuity benefits

(1) The deeds and rules constituting or relating to the occupational retirement scheme established in Hong Kong and known as The Ka Wah Bank Group Provident Fund and the provident fund scheme established in Hong Kong and known as the AIA-JF Premium Mandatory Provident Fund Scheme (友邦怡富強積金優越計劃), and the gratuity benefits payable by CITIC Ka Wah Bank shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to CITIC Ka Wah Bank there were substituted a reference to Hongkong Chinese Bank in respect of officers or employees of CITIC Ka Wah Bank who become officers or employees of Hongkong Chinese Bank by virtue only of this Ordinance.

(2) No officer or employee of CITIC Ka Wah Bank who becomes an officer or employee of Hongkong Chinese Bank by virtue of this Ordinance shall, by virtue only of this Ordinance, be entitled to participate in the provident fund scheme established in Hong Kong and known as the Zurich-Chinese Bank MPF Scheme - PremierDELUXE (蘇黎世華人銀行強積金計劃—顯赫之選), any provident fund schemes of or gratuity payments payable by Hongkong Chinese Bank, and no existing officer or employee of

Hongkong Chinese Bank shall, by virtue only of this Ordinance, be entitled to participate in The Ka Wah Bank Group Provident Fund or the AIA-JF Premium Mandatory Provident Fund Scheme (友邦怡富強積金優越計劃) or any other occupational retirement scheme of, provident fund scheme of, or gratuity benefits payable by CITIC Ka Wah Bank.

12. Waiver of prohibition of merger

(1) Any provision contained in any contract or other document to which Hongkong Chinese Bank or CITIC Ka Wah Bank or any of their respective subsidiaries is a party which prohibits or has the effect of prohibiting the transfer and vesting or deemed transfer and vesting of the undertaking of CITIC Ka Wah Bank in Hongkong Chinese Bank shall be deemed by this Ordinance to have been waived.

(2) Any provision contained in any contract or other document to the effect that a default shall occur or be deemed to occur as a result of the transfer and vesting or deemed transfer and vesting of the undertaking of CITIC Ka Wah Bank in Hongkong Chinese Bank, and to which Hongkong Chinese Bank or CITIC Ka Wah Bank or any of their respective subsidiaries is a party, shall be deemed by this Ordinance to have been waived.

13. Evidence: books and documents

(1) All books and other documents which would, before the appointed day, have been evidence in respect of any matter for or against CITIC Ka Wah Bank shall be admissible in evidence in respect of the same matter for or against Hongkong Chinese Bank.

(2) In this section, "documents" (文件) has the same meaning as in section 46 of the Evidence Ordinance (Cap. 8).

14. Part III of Evidence Ordinance (Cap. 8)

(1) On and from the appointed day, Part III of the Evidence Ordinance (Cap. 8) shall apply to the banker's records of CITIC Ka Wah Bank deemed to be vested in Hongkong Chinese Bank by virtue of this Ordinance, and to entries made in those records before the appointed day, as if such records were the records of Hongkong Chinese Bank.

(2) For the purposes of section 20 of the Evidence Ordinance (Cap.8), banker's records which are deemed to have become the banker's records of Hongkong Chinese Bank by virtue of this Ordinance shall be deemed to have been the ordinary banker's records of Hongkong Chinese Bank at the time of the making of any entry therein which purports to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

(3) For the purposes of sections 40 and 41 of the Evidence Ordinance (Cap.8), documents previously in the custody or control of CITIC Ka Wah Bank shall by virtue of this Ordinance be deemed to be documents previously in the custody or control of Hongkong Chinese Bank.

(4) In this section, "banker's records"(銀行紀錄)shall be construed in accordance with section 2 of the Evidence Ordinance (Cap. 8).

15. Evidence of vesting and transfer

(1) The production of a Government Printer's copy of this Ordinance shall, for all purposes, be conclusive evidence of the vesting and transfer or deemed vesting and transfer of any property and liabilities of CITIC Ka Wah Bank in Hongkong Chinese Bank in accordance with the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1) -

- (a) a Government Printer's copy of this Ordinance, together with evidence of publication of notice of the appointed day -
 - (i) shall, in relation to any registered securities transferred to, and vested in, Hongkong Chinese Bank by virtue of this Ordinance, operate for all purposes as a duly executed instrument of transfer in respect of the transfer of such registered securities from CITIC Ka Wah Bank to Hongkong Chinese Bank;
 - (ii) shall, together with a certified copy of any resolution made pursuant to paragraph (d) of the definition of "excluded property and liabilities" in section 2(1), be sufficient evidence that the property or liabilities mentioned within such a resolution are excluded property and liabilities;
- (b) any deed or other document made or executed on or after the appointed day, whereby Hongkong Chinese Bank or CITIC Ka Wah Bank, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by CITIC Ka Wah Bank immediately before the appointed day and forming part of the undertaking, whether alone or jointly with any other person, shall be sufficient evidence that the interest of CITIC Ka Wah Bank in that property is vested in Hongkong Chinese Bank under this Ordinance;
- (c) where there is any other transaction or purported transaction by CITIC Ka Wah Bank or Hongkong Chinese Bank on or after the appointed day in connection with, or in relation to, any property or liabilities which are property or liabilities of CITIC Ka Wah Bank immediately before that day and forming part of the undertaking, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that Hongkong Chinese Bank

has full power and authority for that transaction as if the property or liabilities were vested in it under this Ordinance;

- (d) a certificate given by or on behalf of Hongkong Chinese Bank at any time that any property or liabilities specified in the certificate (which property or liabilities immediately before the appointed day is the property or liabilities of CITIC Ka Wah Bank) is or, as the case may be, is not, deemed to be vested in Hongkong Chinese Bank under this Ordinance, shall be conclusive evidence for all purposes of the fact so certified.

(3) Nothing in subsection (2)(c) and (d) shall affect the liability of CITIC Ka Wah Bank and Hongkong Chinese Bank to the other of them in respect of anything done, or purporting to have been done, by either of them in connection with, or in relation to, any property or liabilities.

(4) In subsection (2) -

- (a) "convey" (轉易) includes mortgage, charge, lease, assent, vest by way of vesting declaration or vesting instrument, disclaim, release or otherwise assure; and
- (b) "registered securities" (註冊證券) means shares, stocks, debentures, loans, bonds, units of a unit trust scheme or other shares of the investments subject to the trusts of such a scheme, and other securities of any description which are transferable and the holders of which are entered in a register (whether maintained in Hong Kong or not).

(5) Nothing in this section applies to any property falling within section 5(2).

16. **Interests in land**

(1) The vesting and deemed vesting in Hongkong Chinese Bank of an interest in land by virtue of this Ordinance shall not -

- (a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of section 53(4)(a) or (7)(a), 119E(2) or 119H(1)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7); or
- (b) constitute an assignment or underlease of, or an agreement to assign or underlet, that interest for the purposes of section 6(1)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7); or
- (c) operate so as to merge any leasehold interest in the reversion expectant on it; or

- (d) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest for the purposes of any provision contained in any instrument concerning or affecting that interest; or
- (e) operate as a breach of covenant or condition against alienation; or
- (f) give rise to any forfeiture, damages or other right of action; or
- (g) invalidate or discharge any contract or security interest; or
- (h) extinguish, affect, vary, diminish or postpone any priority of that interest, whether under the Land Registration Ordinance (Cap. 128), at law or in equity.

(2) All existing registration of any interest in land in the name of CITIC Ka Wah Bank (whether alone or with any other person) vested in Hongkong Chinese Bank by virtue of this Ordinance and all existing registration of any interest in land in the name of Hongkong Chinese Bank (whether alone or with any other person) immediately before the appointed day shall be construed and have effect on and from the appointed day as if the name "CITIC Ka Wah Bank Limited 中信嘉華銀行有限公司" had been entered on the land register instead of the name of CITIC Ka Wah Bank or Hongkong Chinese Bank, as the case may be.

(3) All existing registration of any interest in land in the name of CITIC Ka Wah Bank (whether alone or with any other person) not vested in Hongkong Chinese Bank by virtue of this Ordinance shall be construed and have effect on and from the appointed day as if the name "CITIC International Financial Holdings Limited 中信國際金融控股有限公司" had been entered on the land register instead of the name of CITIC Ka Wah Bank.

(4) To enable Hongkong Chinese Bank to complete title, if thought fit, to any property transferred to it and vested or deemed to be vested in it by virtue of this Ordinance by notice of title, deed, instrument or otherwise, or to deduce title, this Ordinance shall be deemed to be, and may be used as an assignment, conveyance, transfer or, as the case may be, general disposition of such property in favour of Hongkong Chinese Bank.

(5) Hongkong Chinese Bank shall register or cause to be registered in the Land Registry a Government Printer's copy of this Ordinance against a property transferred to it and vested or deemed to be vested in it by virtue of this Ordinance in respect of the vesting of all the properties of CITIC Ka Wah Bank transferred to and vested or deemed to be vested in Hongkong Chinese Bank by virtue of this Ordinance.

(6) For the avoidance of doubt, nothing in this section shall exempt Hongkong Chinese Bank or CITIC Ka Wah Bank from the provisions of the Stamp Duty Ordinance (Cap. 117).

17. Saving for enactments concerning banking institutions

Nothing in this Ordinance shall exempt CITIC Ka Wah Bank or Hongkong Chinese Bank or any subsidiary of CITIC Ka Wah Bank or Hongkong Chinese Bank from the provisions of any enactment regulating the carrying on of the business of any of them.

18. Saving for companies

Nothing in this Ordinance shall prejudice the powers of Hongkong Chinese Bank to alter its memorandum and articles of association or to dispose of, or deal with, its property, security interests or liabilities or to carry on or discontinue any part of its business; and nothing in this Ordinance shall prejudice the powers of CITIC Ka Wah Bank to alter its memorandum and articles of association or to dispose of, or deal with, its property, security interests or liabilities before the appointed day.

19. Saving

Nothing in this Ordinance 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 this Ordinance and those claiming by, from or under them.

Explanatory Memorandum

The purpose of this Bill is to transfer the undertaking of CITIC Ka Wah Bank Limited to The Hong Kong Chinese Bank, Limited. Both CITIC Ka Wah Bank Limited and The Hong Kong Chinese Bank, Limited are banks licensed under the Banking Ordinance (Cap. 155) and are incorporated in Hong Kong.

2. The Bill provides for the vesting or deemed vesting of the undertaking of CITIC Ka Wah Bank Limited in The Hong Kong Chinese Bank, Limited on the appointed day (clause 5), for the change of name of CITIC Ka Wah Bank Limited and The Hong Kong Chinese Bank, Limited and revocation of the banking licence of CITIC Ka Wah Bank Limited (clause 4) and contains a number of supplementary provisions relating, inter alia, to the effect of the vesting in relation to trusts and wills (clause 6), the accounting treatment of CITIC Ka Wah

Bank Limited and The Hong Kong Chinese Bank, Limited (clause 8), taxation matters (clause 9), the relationship with customers, borrowers, employees and other third parties (clauses 7, 10, 11 and 12), and evidence (clauses 13 to 15).

CLIFFORD CHANCE
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CITIC Ka Wah Bank Limited
The Hong Kong Chinese Bank, Limited