

For information  
on 9 April 2002

## **LegCo Panel on Financial Affairs**

### **CITIC Ka Wah Bank Limited (Merger) Bill**

#### **Introduction**

This note informs Members of the Administration's views on the CITIC Ka Wah Bank Limited (Merger) Bill (the Bill).

#### **Bank merger**

2. The Bill seeks to transfer the undertaking of CITIC Ka Wah Bank Limited ("transferring bank") to The Hong Kong Chinese Bank, Limited ("transferree bank" or "merged entity"), effecting a merger between the two banks (the two banks are collectively referred to as the "merging entities"). It is the 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.

3. As regards this particular case, the Administration considers that the proposed merger will help promote stability of the banking sector.

#### **Taxation**

4. The Bill, as currently drafted, contains several clauses (in particular clauses 8 and 9) which have the effect of deeming the merged entity as one and the same as the transferring bank in law; and allowing any profits and losses of the transferring bank to be treated as the profits and losses of the merged entity from the beginning of the financial year of the merger.

5. Section 19C(4) of the Inland Revenue Ordinance, which governs the set-off of losses incurred by a corporation, provides that where a corporation in any year of assessment sustains a loss in that trade, the amount of that loss shall be set off against the assessable profits of the same corporation for that year of assessment, and to the extent not so set off, shall be carried forward and set-off against the same corporation's assessable profits for subsequent years of assessment. In other words, this 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.

6. The Government's policy is to have regard to the status of the merged entity under operation of law (where foreign or local) when deciding whether or not the merged entity may carry forward the assessed losses of the merging entities.

7. Under the recently enacted Bank of China (Hong Kong) Limited (Merger) Ordinance, The Bank of East Asia, Limited Ordinance, Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Ordinance and The Bank of East Asia, Limited (Merger) Ordinance, the merged entity is deemed as one and the same as the merging entities. The Government implements the provisions in the enacted Ordinances, including allowing the merged entity, for tax assessment purpose, to carry forward any losses accumulated by any of the merging entities, in accordance with Section 19C(4) of the Inland Revenue Ordinance.

8. The same would apply to other merger bills, if they carry similar provisions deeming the merged entity as one and the same as the merging entities, and if the bills are enacted by the Legislative Council.