

**President's ruling on
CITIC Ka Wah Bank Limited (Merger) Bill
proposed by Dr Hon David LI Kwok-po, GBS, JP**

I have been requested by Dr Hon David LI to rule whether his proposed CITIC Ka Wah Bank Limited (Merger) Bill, which he intends to introduce into this Council, relates to the restrictions prescribed in Rule 51(3) and (4) of the Council's Rules of Procedure. Before making a ruling on the Bill, I have invited the Secretary for Financial Services (SFS) to offer his comments and Mr LI to offer his response. I have also sought the advice of Counsel to the Legislature.

Rule 51(3) and (4) of the Rules of Procedure

2. Rule 51(3) and (4) reads as follows:

"51(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government."

"51(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill."

Purpose of the Bill

3. The Bill seeks to transfer certain undertakings of CITIC Ka Wah Bank Limited to The Hong Kong Chinese Bank Limited, thereby effecting a merger between the two banks in so far as undertakings are concerned. The Hong Kong Chinese Bank Limited will become the merged entity and shall be changed to "CITIC Ka Wah Bank Limited". On a day to be appointed by the Hong Kong Monetary Authority, the original banking licence of CITIC Ka Wah Bank Limited will be revoked and the bank will be changed to "CITIC International Financial Holdings Limited".

4. The Bill is similar to the bank merger bills introduced by some Members recently, which I have ruled as relating to Government policy and requiring the written consent of the Chief Executive for introduction into the Council.

The Administration's views

5. SFS is of the view that the Bill relates to Government's policies on bank merger, taxation, and control of tenancies:

(a) Bank merger

SFS advises that it is 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.

(b) Taxation

According to SFS, several clauses (in particular clauses 8 and 9) of the Bill have the effect of deeming the merged entity as one and the same person as the transferring bank in law; and of 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. These clauses relate to Government's policy in section 19C(4) of the Inland Revenue Ordinance regarding the tax relief available to a corporation (as opposed to a group of associated companies) by allowing its losses (either current or brought forward) to be set-off against its profits under specified conditions.

(c) Control of tenancies

Under Clauses 16(1)(a) and (b) of the Bill, the vesting and deemed vesting in the transferee bank of an interest in land by virtue of the enacted Ordinance shall not constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of sections 53(4)(a) or 7(a), 119E(2) or 119H(1)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (LTCO), or an assignment or underlease of, or an agreement to assign or underlet, that interest for the purposes of section 6(1)(b) of LTCO.

SFS considers that these provisions, if enacted, will have the effect of amending the application of those sections of LTCO referred to therein; the latter may otherwise apply but for the

enactment of these provisions. Hence, they relate to government policy as reflected in the said sections of LTCO.

Response from Dr Hon David LI

6. Mr LI has informed me that he has no objection to SFS's view.

Advice of Counsel to the Legislature

7. Counsel to the Legislature advises that the issues raised in the Bill by the Administration are substantially the same as those on which the President has ruled in the other recently enacted bank merger bills. He is of the view that the Bill, like the other bills, relates to Government policies.

My opinion

8. Having considered the advice of Counsel to the Legislature in the light of SFS's views on the Bill, and having regard to Mr LI's advice that he has no objection to the Administration's views, I am satisfied that the Bill relates to Government's policies on the regulation of banks, the set-off of losses against profits of corporations, and the control of tenancies, as reflected in the relevant legislation.

Ruling

9. I rule that CITIC Ka Wah Bank Limited (Merger) 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.

(Mrs Rita FAN)
President
Legislative Council

24 April 2002