

**President's ruling on
Standard Chartered Bank (Hong Kong) 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 Standard Chartered Bank (Hong Kong) 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 and the Treasury ("SFST") 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 provides for the merger and reorganization of the undertakings of the Hong Kong branch of Standard Chartered Bank, Manhattan Card Company Limited, Standard Chartered Finance Limited, Standard Chartered International Trade Products Limited and Chartered Capital Corporation Limited (together, the Transferring Entities) by transferring their assets and liabilities to a new, wholly owned subsidiary within the Standard Chartered Group, which is named Standard Chartered Bank (Hong Kong) Limited.

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

The Administration's views

5. SFST is of the view that the Bill relates to Government's policies on bank merger, issue of legal tender notes, taxation, and control of tenancies:

(a) Bank merger

SFST 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) Issue of legal tender notes

SFST advises that the Bill has stated the intention of the Standard Chartered Bank (Hong Kong) Limited to apply for authorization as a note-issuing bank in place of Standard Chartered Bank from the appointed day. Clause 7 sets out the rights and obligations that Standard Chartered Bank (Hong Kong) Limited will assume in the event that it is authorized as a note-issuing bank. The Government's policy is to ensure that any succession of note-issuing bank should be smooth and conducive to maintaining public confidence in the notes of the bank. Further, the matters referred to in clause 7 are governed by existing government policies reflected in the Legal Tender Notes Issue Ordinance (Cap. 65) and the Exchange Fund Ordinance (Cap. 66).

(c) Taxation

SFST points out that Clause 10(1) of the Bill provides that for the purposes of the Inland Revenue Ordinance (Cap. 112) (IRO), Standard Chartered Bank (Hong Kong) Limited shall be treated as the continuation of and the same person as the Transferring Entities. Following from this, accumulated losses of the Transferring Entities, if any, will be available for set off against profits of Standard Chartered Bank (Hong Kong) Limited. This has the effect of overriding the provision in section 19C(4) of the IRO.

Section 19C(4) of the IRO 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. This provision enables a corporation (as opposed to a group of associated companies) to set off its loss carried forward to subsequent years of assessment against the assessable profits for those years; and that when a corporation is liquidated or ceases to exist upon merger, the loss it incurred would lapse.

On the issue of set-off of losses against profits of corporations, the Government's policy is that section 19C(4) of IRO should apply unless it is specifically overridden by another law enacted by the Legislative Council and signed by the Chief Executive. The Bill, with provisions having the effect of allowing set off of losses and profits between associated companies, clearly relates to this policy. Therefore, if the Bill is enacted, the Government has to implement the provisions in the enacted Ordinance, including allowing the Standard Chartered Bank (Hong Kong) Limited, for tax assessment purposes, to carry forward any losses accumulated by any of the Transferring Entities.

(d) Control of tenancies

Under Clause 17(1)(a) and (b) of the Bill, the vesting and deemed vesting in the Standard Chartered Bank (Hong Kong) Limited of an interest in land by virtue of the enacted Ordinance shall not constitute:

- (i) 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) (LTO); or
- (ii) an assignment or underlease of, or an agreement to assign or underlet, that interest for the purposes of section 6(1)(b) of LTO.

SFST considers that Clause 17(1)(a) and (b), if enacted, will have the effect of amending the application of those sections of LTO 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 above-mentioned sections of LTO.

Response from Dr Hon David LI

6. Mr LI has informed me that he has no comments on SFST's view.

Advice of Counsel to the Legislature

7. Counsel to the Legislature advises that he agrees with SFST that the Bill would have a substantive effect on Government's policies on bank merger, issue of legal tender notes, taxation and control of tenancies, hence it relates to Government policy. He also points out that, unlike the previous bank merger bills, the Bill does not seek the backdating of accounting treatment. The Transferring Entities would still be liable for taxation in Hong Kong up to the appointed day.

My opinion

8. Having considered the advice of Counsel to the Legislature in the light of SFST's views on the Bill, and having regard to Mr LI's advice that he has no comments on the Administration's views, I consider that the Bill relates to Government's policies on the regulation of banks, taxation, issue of legal tender notes, and the control of tenancies, as reflected in the relevant legislation.

Ruling

9. I rule that the Standard Chartered Bank (Hong Kong) Limited (Merger) Bill relates to Government policies within the meaning of Rule 51(3) and (4) of the Rules of Procedure and requires the written consent of the Chief Executive for its introduction.

(Mrs Rita FAN)
President
Legislative Council

1 March 2004