

立法會

Legislative Council

LC Paper No. LS47/04-05

**Paper for the House Committee Meeting
on 8 April 2005**

Legal Service Division Report on Citibank (Hong Kong) Limited (Merger) Bill

(Private Member's Bill)

I. SUMMARY

- 1. Object of the Bill** To provide for the vesting in Citibank (Hong Kong) Limited ("Citibank HK") of the retail banking business of Citibank N.A. in Hong Kong now operated through a branch in Hong Kong ("Citibank HK Branch").
- 2. Comments**
 - (a) This is a Member's bill introduced by Dr Hon David LI Kwok-po, GBS, JP with the consent of the Acting Chief Executive.
 - (b) Citibank HK is a wholly owned subsidiary of Citibank N.A. and is carrying on a part of Citibank N.A.'s consumer businesses. After the proposed transfer, Citibank HK would carry on the retail banking business while Citibank HK Branch would continue to carry on its corporate banking business, private banking business and any other businesses other than retail banking business.
 - (c) The Bill is generally similar to previously enacted bank merger ordinances.
- 3. Public Consultation** No public consultation has been carried out, but existing customers and staff have been consulted.
- 4. Consultation with LegCo Panel** The Bill was discussed at the meeting of the Panel on Financial Affairs on 1 November 2004.
- 5. Conclusion** Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

II. REPORT

Object of the Bill

To provide for the vesting in Citibank (Hong Kong) Limited (“Citibank HK”) of the retail banking business of Citibank N.A. in Hong Kong now operated through a branch in Hong Kong (“Citibank HK Branch”).

LegCo Brief Reference

2. LegCo Brief dated 1 April 2005 issued by Hon Dr David LI Kwok-po, GBS, JP.

Date of First Reading

3. 6 April 2005.

Comments

Private Member's Bill

4. This is a private bill presented by Dr Hon David LI Kwok-po, GBS, JP. According to the Preamble, Citibank HK is a company incorporated in Hong Kong and is a wholly owned subsidiary of Citibank N.A. Citibank N.A. is a national banking association organized under the laws of the United States and is operating that part of its business which constitutes the retail banking business in Hong Kong through Citibank HK Branch. Both banks are authorized under the Banking Ordinance (Cap. 155) and the application of Citibank HK for a full banking licence has been approved on 28 October 2004.

5. We have been informed that Citibank HK already carries on a substantial part of the consumer businesses of Citibank N.A. in Hong Kong, including its credit card and mutual fund businesses. The Bill would bring together the consumer businesses of Citibank N.A. in Hong Kong in a single corporate vehicle by vesting the retail banking business (“the undertakings”) of Citibank HK Branch in Citibank HK. After the transfer, Citibank HK Branch would continue to carry on its corporate banking business, private banking business and any other businesses other than retail banking business.

6. The President has ruled that the Bill relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure and requires the written consent of the Chief Executive for its introduction. The policies that the Bill relates to are the regulation of banks, taxation and the control of tenancies as reflected in the relevant legislation. By letter dated 29 March 2005, the Acting Chief Executive gave consent for the Bill to be introduced into the Council. In accordance with Rule 54(1) of the Rules of Procedure, such written consent was signified by the Secretary for Financial Services and the Treasury before the Council entered upon consideration of the second reading of the Bill on 6 April 2005.

The Administration's support of the proposed merger

7. The Administration has informed members of the Panel on Financial Affairs that it is the Government's policy to support reasonable proposals for bank mergers, consolidation or restructuring, which are normal commercial activities, subject to the overriding principle that these proposals would not undermine the general stability and effective working of the banking system and the protection to depositors. In line with this policy, the Administration and the Hong Kong Monetary Authority ("HKMA") are in support of the Bill.

Appointed day

8. The vesting of undertakings would take effect on the appointed day. The Bill provides that Citibank HK and Citibank HK Branch shall give joint notice in the Gazette of the appointed day, and such notice is not subsidiary legislation. According to the LegCo Brief, the appointed day would be decided in consultation with HKMA. On the appointed day, without further act or deed, Citibank HK would succeed to the undertakings of Citibank HK Branch as if in all respects Citibank HK were the same person in law as Citibank HK Branch.

9. The undertakings of Citibank HK Branch would not include "excluded property and liabilities". The term is so defined as to facilitate the continuation of Citibank HK Branch in carrying on its businesses other than retail banking business, and payment of retained earnings by Citibank HK Branch to Citibank N.A.. Allen and Overy ("the Solicitors"), solicitors for Citibank N.A. have confirmed that the retained earnings excluded from the undertakings are earnings after tax.

Taxation

10. The undertakings of Citibank HK Branch would be transferred to Citibank HK at their carrying value in the accounts of Citibank HK Branch immediately prior to the appointed day. The Bill does not seek the backdating of accounting treatment. Citibank HK Branch would be liable for taxation of its profits and losses in Hong Kong immediately prior to the appointed day, and Citibank HK would be liable for the profits or losses arising from the undertakings on and after the appointed day.

11. Under the Bill, Citibank HK would be treated on and from the appointed day as if it were the continuation of and the same person in law with regard to the undertakings as Citibank HK Branch for the purposes of the Inland Revenue Ordinance (Cap. 112). The legal effect is that Citibank HK would be able to qualify under section 19C(4) of the Inland Revenue Ordinance to claim set-off of loss arising from the undertakings which may have been incurred by Citibank HK Branch against the profits of Citibank HK. We have been informed by the Solicitors that Citibank HK Branch does not carry any accumulated loss nor is it anticipated that there would be any loss up to the appointed day.

Personal data

12. The Bill provides that the transfer to and vesting in Citibank HK of the undertakings of Citibank HK Branch, and any disclosure to Citibank HK of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which Citibank HK Branch is subject immediately prior to the appointed day or to a contravention by Citibank HK or Citibank HK Branch of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

13. The effect of the provision is:

- (a) to overcome the difficulty of breaching the common law duty of confidentiality that exists between a banker and its customers;
- (b) to deal with the possible contravention of the requirements under the Personal Data (Privacy) Ordinance;
- (c) to preclude the need for the Citibank HK Branch to obtain prescribed consent from the data subjects under data protection principle 3 of the Personal Data (Privacy) Ordinance.

Security interest

14. The Bill ensures that the liability of persons providing security interest to Citibank HK or Citibank HK Branch would not be increased or expanded by virtue of the Bill unless —

- (a) the terms of such security interest expressly provide otherwise;
- (b) Citibank HK obtains the written consent of the persons who granted such security interest; or
- (c) such security interest arises at general law.

Contracts of employment

15. There is no provision deeming employment with Citibank HK Branch and Citibank HK to be a single continuing employment because all relevant employees have consented to the transfer of their employment. According to Citibank HK, all staff is now employed by Citibank HK on terms no less favourable than before and there has been no reduction in the number of staff.

Public Consultation

16. Although no public consultation has been carried out, existing customers and staff have been consulted (see paragraphs 15 and 18(e) of this Report). According to the LegCo Brief, various Government departments and statutory bodies have reviewed and commented on the Bill.

Consultation with LegCo Panel

17. At the meeting of the Panel on Financial Affairs on 1 November 2004, members requested the following information to facilitate their consideration of the Bill:

- (a) reasons for the proposed transfer of undertakings and whether they are compatible with government policy;
- (b) impact of the proposed transfer on existing customers in Hong Kong, and whether they have been consulted;
- (c) protection of customers' interest after the transfer in the event the assets of Citibank HK are insufficient to meet customers' claims;
- (d) impact of the transfer on the existing staff, whether they have been consulted and whether there are any plans to lay off staff as a result of the transfer; and
- (e) impact of the proposed transfer on capital requirements and level of supervision by HKMA.

18. The supplementary information paper provided by the Member in charge and the Administration's written reply (LC Paper Nos. CB(1)313/04-05(02) and (03) issued on 23 November 2004) are summarized below:

- (a) Citibank N.A. operates retail banking businesses through subsidiaries in many countries around the world outside the United States. It is also in the process of transferring its Singapore retail banking business to a Singapore incorporated subsidiary. In this context, the proposed transfer under the Bill is part of a wider reorganization process in relation to the businesses of Citibank N.A. outside the United States;
- (b) The proposed transfer reaffirms Citibank N.A.'s commitment to Hong Kong, its customers and employees, and will provide a number of benefits. It provides a tax-efficient way for Citibank N.A. to retain and re-invest the profits of the retail banking business in Hong Kong, while deferring its liability for taxation in the United States at a group level. It allows Citibank N.A. to streamline its relationship with its customers and enhance its efficiency. Citibank HK may benefit from the potential advantages of future changes to the legal and regulatory environment in the People's Republic of China, even though it is not immediately qualified to benefit from CEPA;
- (c) Citibank HK is a fully licensed bank subject to the direct supervisory regulation by HKMA, and needs to comply with HKMA's capital adequacy requirement for locally incorporated banks. It is estimated

that the capital will be increased from less than US\$100 million to between US\$700 and US\$1,000 million as part of the transfer exercise;

- (d) Citibank N.A. is not seeking to limit its potential liabilities to customers through the transfer. It is in the interest of Citibank N.A. that Citibank HK meets its financial obligations at all times. Thus, practical considerations relevant to any very large contractual claim made against the retail banking business in Hong Kong, whether before or after the transfer, are substantially the same;
- (e) Citibank N.A. has conducted surveys of local customers and nearly 90% of them have no objection to the transfer. Arrangements to answer questions from customers would be made as part of the merger notification exercise;
- (f) As set out in paragraph 15 above, there is no impact on existing staff; and
- (g) Apart from capital adequacy, Citibank HK is required to establish a board of directors with a minimum of three independent non-executive directors. Other supervisory requirements include limits on large exposures, connected lending shareholding in other companies, interest in land and buildings, and more comprehensive financial disclosure.

19. Members of the Panel on Financial Affairs noted the written responses and have not requested for further discussion at Panel meetings.

Conclusion

20. The Bill is generally similar to previously enacted bank merger ordinances, and its legal and drafting aspects present no problem. Subject to Members' views on the policy aspect, the Bill is ready for resumption of Second Reading debate.

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