

立法會 *Legislative Council*

LC Paper No. LS71/04-05

**Paper for the House Committee Meeting
on 27 May 2005**

Legal Service Division Report on Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill

(Private Member's Bill)

I. SUMMARY

- 1. Object of the Bill** To provide for the vesting in Industrial and Commercial Bank of China (Asia) Limited of the undertakings of the Hong Kong Branch of Belgian Bank.
- 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) The Bill is generally similar to previously enacted bank merger ordinances.
 - (c) A Committee Stage Amendment would be introduced to achieve consistency in the Chinese text. The Committee Stage Amendment is technical in nature and the Administration has no comment on it.
- 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 special meeting of the Panel on Financial Affairs on 17 December 2004.
- 5. Conclusion** The proposed Committee Stage Amendment is legally in order. 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 Industrial and Commercial Bank of China (Asia) Limited (“ICBC (Asia)”) of the undertakings of the Hong Kong Branch of Belgian Bank (“BBHK”).

LegCo Brief Reference

2. LegCo Brief dated 20 May 2005 issued by Hon Dr David LI Kwok-po, GBS, JP.

Date of First Reading

3. 25 May 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, ICBC (Asia) is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong. Belgian Bank is a company incorporated under the laws of Belgium and operates through a branch in Hong Kong. Both banks are authorized under the Banking Ordinance (Cap. 155) and are carrying on the business of banking in Hong Kong and elsewhere.

5. According to the LegCo Brief, Belgian Bank has been a wholly owned subsidiary of ICBC (Asia) and a member of the ICBC (Asia) Group (comprising ICBC (Asia) and its subsidiaries) since 30 April 2004. It is stated in the Preamble that for the better conduct of the businesses of ICBC (Asia) Group, ICBC (Asia) and Belgian Bank, it is expedient that the undertakings of BBHK be merged into ICBC (Asia) and that such merger should occur by means of a transfer of the undertakings of BBHK to ICBC (Asia). It is also stated that in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of BBHK, it is expedient that such undertakings be transferred by an ordinance so that there would be no interference with the conduct and continuity of the businesses of both banks.

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 12 May 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 25 May 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 consolidation of the banking sector subject to the overriding aims of improving the overall competitiveness of the banking sector, promoting the stability of the banking system and providing an appropriate degree of protection to depositors in the merged institutions and to depositors generally. 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 ICBC (Asia) and BBHK shall give joint notice in the Gazette of the appointed day, and such notice is not subsidiary legislation. On the appointed day, without further act or deed, ICBC (Asia) would succeed to the undertakings of BBHK as if in all respects ICBC (Asia) were the same person in law as BBHK. The banking licence of Belgian Bank would be revoked in accordance with Part V of the Banking Ordinance on and from a day to be appointed by HKMA and published in the Gazette.

9. The undertakings of BBHK would not include "excluded property and liabilities". The term is so defined to facilitate compliance with the Belgian Companies Code, the laws of Belgium of 17 July 1975 regarding the accounts of companies and the Companies Ordinance (Cap. 32). No discretion is given to ICBC (Asia) or BBHK to exclude any property or liabilities from the vesting of undertakings.

Taxation

10. Under the Bill, ICBC (Asia) 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 BBHK for the purposes of the Inland Revenue Ordinance (Cap. 112). The legal effect is that ICBC (Asia) 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 BBHK against the profits of ICBC (Asia). According to the LegCo Brief, BBHK does not have any accumulated losses.

11. The Bill seeks the backdating of account treatment. The balance sheets and profit and loss accounts of BBHK and ICBC (Asia) for the accounting period in which the appointed day falls would be prepared in all respects as if the undertakings had vested in ICBC (Asia) on the first day of such accounting period. It is expressly provided that any profits or losses of BBHK earned or incurred after the beginning of the financial year in which the appointed day shall occur would be treated as profits or losses of ICBC (Asia).

Personal data

12. The Bill provides that the transfer to and vesting in ICBC (Asia) of the undertakings of BBHK, and any disclosure to ICBC (Asia) of any information in

contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which BBHK is subject immediately prior to the appointed day or to a contravention by ICBC (Asia) or BBHK of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

Security interest

13. The Bill ensures that the liability of persons providing security interest to ICBC (Asia) or BBHK would not be increased or expanded by virtue of the Bill unless otherwise excepted.

Contracts of employment

14. The Bill seeks to deem employment with BBHK and ICBC (Asia) for all purposes to be a single continuing employment. Provisions are also made in relation to pension fund schemes and provident fund schemes established for the benefit of employees of BBHK and gratuity benefits payable by BBHK. According to the LegCo Brief, employees of both banks are generally supportive of the merger because it would ultimately provide more opportunities for their career advancement.

Committee Stage Amendment

15. Dr Hon David Li intends to introduce a Committee Stage Amendment on resumption of the second reading debate. The Committee Stage Amendment, attached at the **Annex**, seeks to achieve consistency between the Chinese rendition for “conclusive evidence” in Clause 15(1) and those in Clauses 15(2)(d) and 16(3). It is technical in nature and is legally in order. The Administration has no comment on it.

Public Consultation

16. Although no public consultation has been carried out, existing customers and staff have been consulted (see paragraphs 14 and 20 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 special meeting of the Panel on Financial Affairs on 17 December 2004, members were advised that the need for the merger arose from ICBC (Asia)’s acquisition of all outstanding shares of BBHK. Members expressed support for the Bill in principle and raised the following concerns:

- (a) increased consolidation of the banking sector might make small local banks less competitive in the market;
- (b) whether the merger would result in staff redundancy; and
- (c) whether customers had been consulted on the merger.

18. Members noted the Administration's policy on bank mergers as set out in paragraph 7 above. The Administration advised members that there were over 100 foreign banks and about 25 local banks operating in Hong Kong. The presence of a large number of foreign banks had reinforced Hong Kong's position as a prominent international financial centre. As foreign and local banks had different focuses in terms of business and customers, the presence of a large number of foreign banks did not cause excessive competition with local banks.

19. Members noted ICBC (Asia)'s confirmation that it had no plan to lay off staff as a result of the merger. While the harmonization and integration process associated with the merger would likely lead to a surplus of employees in certain areas, ICBC (Asia) would re-deploy these employees to other areas which had shortage in personnel and would provide suitable training to help them acquire the necessary skills for the new jobs.

20. Members were advised that the senior management of ICBC (Asia) and BBHK had visited BBHK's larger customers to inform them of the merger. The customers were generally comfortable with the merger and some welcomed the move with an expectation that they would be provided with better banking support in Mainland China. Other customers were informed about the merger through daily interaction in branches, business meetings, visits, and mass media reports. The feedbacks received were very positive and encouraging.

21. Members may wish to refer to the minutes of the special meeting (LC Paper No. CB(1)1017/04-05) for details.

Conclusion

22. The Bill is generally similar to previously enacted bank merger ordinances. The proposed Committee Stage Amendment referred to in paragraph 15 above is legally in order. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

Encl.

Prepared by
Wong Sze-man, Bernice
Assistant Legal Adviser
Legislative Council Secretariat
25 May 2005

INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED
(MERGER) BILL

COMMITTEE STAGE

Amendments to be moved by Dr. the Honourable David LI Kwok-po, GBS, JP

<u>Clause</u>	<u>Amendment Proposed</u>
15(2)(d)	By deleting “不可推翻的證據” and substituting “確證” .
16(3)	By deleting “不可推翻的證據” and substituting “確證” .