

**INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA)
LIMITED (MERGER) ORDINANCE**

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 20 OF 2005

L.S.

Donald TSANG
Chief Executive
14 July 2005

An Ordinance 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 and for other related purposes.

[15 July 2005]

Preamble

WHEREAS—

- (a) Industrial and Commercial Bank of China (Asia) Limited 中國工商銀行(亞洲)有限公司 (hereinafter called “ICBC (Asia)”) is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank authorized under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong and elsewhere;
- (b) Belgian Bank* is a company incorporated under the laws of Belgium and is a bank authorized under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong and elsewhere;
- (c) Belgian Bank is a wholly owned subsidiary of ICBC (Asia) and a member of the ICBC (Asia) Group. The Industrial and Commercial Bank of China (中國工商銀行) is the ultimate holding company of ICBC (Asia);
- (d) Belgian Bank operates through a branch in Hong Kong (hereinafter called “Belgian Bank, Hong Kong Branch”);
- (e) for the better conduct of the businesses of ICBC (Asia) Group, ICBC (Asia) and Belgian Bank, it is expedient that the undertakings of Belgian Bank, Hong Kong Branch be merged into ICBC (Asia) and that such merger should occur by means of a transfer of the undertakings of Belgian Bank, Hong Kong Branch to ICBC (Asia); and

* In the Certificate of Registration of Change of Name of Oversea Company kept by the Companies Registry, there is no registered Chinese name for Belgian Bank, and in Hong Kong “華比銀行” is the Chinese trading name of “Belgian Bank”.

- (f) in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of Belgian Bank, Hong Kong Branch, it is expedient that the said undertakings be transferred to ICBC (Asia) by this Ordinance without interference with the conduct and continuity of the respective businesses of ICBC (Asia) and Belgian Bank, Hong Kong Branch.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Industrial and Commercial Bank of China (Asia) Limited (Merger) Ordinance.

2. Interpretation

- (1) In this Ordinance, unless the subject or context otherwise requires—
- “appointed day” (指定日期) means such day as may be appointed pursuant to section 3;
- “Belgian Bank, Hong Kong Branch” (華比香港分行) means Belgian Bank acting through each of the places in Hong Kong at which Belgian Bank carries on business;
- “customer” (客戶) means any person having a banking account or other dealing, transaction or arrangement with Belgian Bank, Hong Kong Branch;
- “data protection principles” (保障資料原則) means the data protection principles set out in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486);
- “excluded property” (除外財產) means—
- (a) such documents and records as are required to be kept by Belgian Bank pursuant to the Belgian Companies Code, as amended, and the laws of Belgium of 17 July 1975 regarding the accounts of companies, as amended;
 - (b) such documents and records as are required to be kept by Belgian Bank, Hong Kong Branch pursuant to the Companies Ordinance (Cap. 32) and other applicable laws; and
 - (c) the issued share capital of Belgian Bank represented by the paid-up shares beneficially owned by ICBC (Asia);
- “existing” (現有) means existing, outstanding or in force immediately before the appointed day;
- “ICBC (Asia)” (中國工商(亞洲)) means Industrial and Commercial Bank of China (Asia) Limited 中國工商銀行(亞洲)有限公司;

- “ICBC (Asia) Group” (中國工商(亞洲)集團) means ICBC (Asia) and its subsidiaries;
- “liabilities” (法律責任) includes duties and obligations of every description (whether present or future, actual or contingent);
- “Privacy Commissioner” (私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap. 486);
- “property” (財產) means property and assets of every description wheresoever situate and rights of every description (whether present or future, actual or contingent), and includes property held on trust or in a fiduciary capacity and security interests, benefits and powers of every description but does not include the excluded property;
- “security interest” (抵押權益) includes a mortgage or charge (whether legal or equitable and whether fixed or floating), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, hypothec, assignment by way of security, indemnity, right of set-off, flawed asset arrangement, agreement or undertaking, right of compensation or undertaking, any standard security, any assignation or disposition ex facie absolute and any agreement or other deed, instrument or document qualifying the same, any bond and disposition or assignation in security, any bond of cash credit, any bond of cash credit and disposition or assignation in security, any assignation in security, any real right or burden of whatever kind in the nature of a security and any other deed, document, conveyance, instrument, arrangement or means (in each case made, granted, arising or subsisting under any applicable law) for securing the payment or discharge of any debt or liability and also includes any agreement or undertaking (in each case, whether in writing or not) to give or execute any of the foregoing whether upon demand or otherwise or other means (in each case made, granted, arising or subsisting under any applicable law) for securing the payment or discharge of a debt or liability (whether present or future, actual or contingent);
- “subsidiary” (附屬公司) has the meaning assigned to it by section 2 of the Companies Ordinance (Cap. 32);
- “undertakings” (業務) means the businesses and all existing property, reserves and liabilities of Belgian Bank, Hong Kong Branch of whatsoever nature as recorded in or created by any of the books and records of the Belgian Bank, Hong Kong Branch;
- “will” (遺囑) includes a codicil and any other testamentary writing.

(2) Any reference in this Ordinance to property or liabilities of Belgian Bank, Hong Kong Branch is a reference to property or liabilities to which Belgian Bank, Hong Kong Branch is for the time being entitled or subject (whether beneficially or in any fiduciary capacity), wherever such property or

liabilities are situated or arise and whether or not capable of being transferred or assigned by Belgian Bank, Hong Kong Branch, and whether Belgian Bank, Hong Kong Branch is entitled to such property or subject to such liabilities under the laws of Hong Kong or under the laws of any country, territory or place outside Hong Kong.

(3) Any body politic or corporate and any other person or persons whose rights are affected by any of the provisions of this Ordinance shall be deemed to be mentioned herein.

3. Notice of appointed day

(1) The directors of ICBC (Asia) may appoint a day for the purposes of this Ordinance.

(2) ICBC (Asia) and Belgian Bank, Hong Kong Branch shall give joint notice in the Gazette stating the day so appointed save that, in the event that such day proves not to be the appointed day for any reason, ICBC (Asia) and Belgian Bank, Hong Kong Branch shall give joint notice in the Gazette to that effect and shall again give joint notice in the Gazette stating the next day so appointed or, as the case may be, the day which was the appointed day.

4. Revocation of banking licence

By virtue of this Ordinance, the banking licence of Belgian Bank shall, in accordance with Part V of the Banking Ordinance (Cap. 155), be revoked on and from a day to be appointed by the Monetary Authority which day shall be published in the Gazette.

5. Vesting of the undertakings in ICBC (Asia)

(1) On the appointed day the undertakings shall, by virtue of this Ordinance and without further act or deed, be transferred to, and vest in, ICBC (Asia) to the intent that ICBC (Asia) shall succeed to the whole undertakings as if in all respects ICBC (Asia) were the same person in law as Belgian Bank, Hong Kong Branch.

(2) Where the transfer and vesting of any property and liabilities situate in any country, territory or place outside Hong Kong and forming part of the undertakings is governed otherwise than by the laws of Hong Kong, Belgian Bank, Hong Kong Branch shall, if ICBC (Asia) so requires, so soon as is practicable after the appointed day, take all necessary steps for securing the effective transfer and vesting thereof in ICBC (Asia) and, pending such transfer and vesting, Belgian Bank, Hong Kong Branch shall hold any such property and liabilities in trust absolutely for ICBC (Asia).

6. Trust property and wills

(1) Any property vested or deemed to be vested in ICBC (Asia) by virtue of this Ordinance which immediately before the appointed day was held by Belgian Bank, Hong Kong Branch, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement, will, or other instrument (whether originally so appointed or not, and whether appointed under hand or seal, or by order of any court or otherwise), or as executor of the will, or administrator of the estate, of a deceased person or as judicial trustee appointed by order of any court, or in any other fiduciary capacity, shall, on and from the appointed day, be held by ICBC (Asia) alone or, as the case may be, jointly with such other person, in the same capacity upon the trusts, and with and subject to the powers, provisions and liabilities, applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property forming part of the undertakings became vested in Belgian Bank, Hong Kong Branch, in any such fiduciary capacity as is referred to in subsection (1) (including in the case of a will any grant of probate thereof), and any provision in such instrument or order, or any existing contract or arrangement, for the payment to, or retention by, Belgian Bank, Hong Kong Branch of remuneration for its services in any such fiduciary capacity, shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank, there were substituted a reference to ICBC (Asia) provided always that this subsection shall not prevent ICBC (Asia) from varying the remuneration or scale of fees payable in accordance with the terms of the relevant instrument or order.

(3) Any will made before the appointed day which has not been proved in Hong Kong before the appointed day, and any will made on or after the appointed day, being a will which appoints Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank to be an executor, trustee or recipient of any property as trustee, shall, on and from the appointed day, be construed and have effect as if for any reference therein to Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank as such executor, trustee or recipient or otherwise in connection with such appointment, not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank, there were substituted a reference to ICBC (Asia).

(4) No testamentary gift shall be adeemed by reason only of the operation of any of the provisions of this Ordinance.

7. Supplementary provisions

Without prejudice to the generality of any other provision of this Ordinance but subject to any provision of this Ordinance to the contrary effect, other than in relation to the excluded property, the following provisions of this section shall have effect—

(a) All existing contracts, agreements, insurance policies, options, novations, certificates, awards, land grants, conveyances, deeds, leases, licences, notices, permits, guarantees, documents granting or comprising any security interest, bonds, indemnities, mandates, instructions and other instruments and obligations entered into by, made with, given to or by or addressed to Belgian Bank, Hong Kong Branch or (in so far as they are) entered into by, made with, given to or by or addressed to Belgian Bank (and in any such case where the rights, liabilities or any chose in action, under or established by such instruments form part of any undertakings), (whether alone or with any other person and whether as principal or agent and whether in writing or not), shall be construed and have effect on and from the appointed day as if—

- (i) ICBC (Asia) had been a party thereto instead of Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank;
- (ii) for any reference (however worded and whether express or implied) to Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank there were substituted, as respects anything falling to be done on or after the appointed day, a reference to ICBC (Asia); and
- (iii) any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank were, as respects anything falling to be done on or after the appointed day, a reference to the directors of ICBC (Asia) or, as the case may require, to such director, officer or employee of ICBC (Asia) as ICBC (Asia) may appoint for that purpose or, in default of appointment, to the director, officer or employee of ICBC (Asia) who corresponds as nearly as may be to the first-mentioned director, officer or employee.

- (b) Paragraph (a)(ii) shall, subject to section 17, apply to any statutory provision, to any provision of any existing contract to which Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank was not a party and to any provision of any other existing document (not being a contract or a will) as they apply to a contract to which that paragraph applies.
- (c) Any account between Belgian Bank, Hong Kong Branch and a customer shall, on the appointed day, be transferred to ICBC (Asia) and become an account between ICBC (Asia) and such customer subject to the same conditions and incidents including, without limitation, any account number as theretofore; and each such account shall be deemed for all purposes to be a single continuing account; and any existing contracts, agreements, insurance policies, options, novations, certificates, awards, land grants, conveyances, deeds, leases, licences, notices, permits, guarantees, documents granting or comprising any security interest, bonds, indemnities, mandates, instructions and other instruments and obligations entered into by, made with, given to or by or addressed to Belgian Bank or, as the case may be, Belgian Bank, Hong Kong Branch (whether alone or with any other person and whether as principal or agent and whether in writing or not), shall be construed and have effect on and from the appointed day as if any reference (however worded and whether express or implied) to such account between Belgian Bank, Hong Kong Branch and a customer there were substituted, as respects anything falling to be done on or after the appointed day, and so far as the context permits, a reference to the continuing account between ICBC (Asia) and such customer:

Provided that nothing in this Ordinance shall affect any right of ICBC (Asia) or of any customer to vary the conditions or incidents subject to which any account is kept.

- (d) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent (whether in writing or not and whether or not in relation to an account) given to or by Belgian Bank, Hong Kong Branch or (in so far as they are) given to or by Belgian Bank on behalf of Belgian Bank, Hong Kong Branch, either alone or jointly with another person, shall apply and have effect, on and from the appointed day, as if given to or by ICBC (Asia) or, as the case may be, to or by ICBC (Asia) jointly with such other person.
- (e) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, Belgian

Bank, Hong Kong Branch or Belgian Bank on behalf of Belgian Bank, Hong Kong Branch, or payable at any place of business of Belgian Bank, Hong Kong Branch, whether so drawn, given, accepted, endorsed or payable before, on or after the appointed day, shall have the same effect on and from the appointed day, as if it had been drawn on, or given to, or accepted or endorsed by ICBC (Asia), or were payable at the same place of business of ICBC (Asia).

- (f) The custody of any document or record, goods or other thing held by Belgian Bank, Hong Kong Branch as bailee shall pass to ICBC (Asia) on the appointed day, and the rights and obligations of Belgian Bank, Hong Kong Branch under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of ICBC (Asia).
- (g) (i) Any security interest held immediately before the appointed day by Belgian Bank, Hong Kong Branch, or by a nominee or agent of or trustee for Belgian Bank, Hong Kong Branch, as security for the payment or discharge of any liability shall, on and from the appointed day, be held by, or, as the case may require, by that nominee, agent or trustee for, ICBC (Asia), and be available to ICBC (Asia) (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of that liability.
- (ii) In relation to any security interest vested or deemed to be vested in ICBC (Asia) in accordance with the provisions of this Ordinance and any liability thereby secured, ICBC (Asia) shall be entitled to the rights and priorities and be subject to the obligations and incidents to which Belgian Bank, Hong Kong Branch would have been entitled and subject if it had continued to hold the security interest.
- (iii) Without prejudice to the generality of subparagraph (ii), in any case where any existing liability subsists between Belgian Bank, Hong Kong Branch and ICBC (Asia), in respect of which Belgian Bank, Hong Kong Branch or ICBC (Asia), or a nominee or agent of or trustee for Belgian Bank, Hong Kong Branch or ICBC (Asia) holds a security interest, that liability shall, for the purpose of enforcing or realizing that security interest, be deemed to continue in effect notwithstanding the vesting of the undertakings in ICBC (Asia).

- (iv) Any security interest referred to in subparagraph (i), (ii) or (iii) and which extends to future advances or future liabilities shall, on and from the appointed day, be available to ICBC (Asia) (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment of future advances and discharge of future liabilities to the same extent and in the same manner in all respects as future advances by, or future liabilities to, Belgian Bank, Hong Kong Branch or ICBC (Asia) were secured thereby immediately before that day.
 - (v) Notwithstanding subparagraph (i), where immediately before the appointed day any security interest would not be available to ICBC (Asia) as security for the payment or discharge of any liability owing to it, or to Belgian Bank, Hong Kong Branch as security for the payment or discharge of any liability owing to it, such security interest shall not become available to ICBC (Asia) as security for such liability on and from the appointed day by virtue of this Ordinance, unless—
 - (A) the terms of such security interest expressly provide otherwise;
 - (B) ICBC (Asia) obtains the written consent of the person or persons who granted such security interest; or
 - (C) such security interest arises at general law.
 - (vi) Notwithstanding subparagraph (ii), where immediately before the appointed day, ICBC (Asia) would not, in respect of any liability owing to it, be entitled to the rights and priorities in relation to any security interest then in existence, or Belgian Bank, Hong Kong Branch would not, in respect of any liability owing to it, be entitled to the rights and priorities in relation to any security interest then in existence, ICBC (Asia) shall not, in respect of such liability, be entitled to such rights and priorities on and from the appointed day by virtue of this Ordinance, unless—
 - (A) the terms of such security interest expressly provide otherwise;
 - (B) ICBC (Asia) obtains the written consent of the person or persons who granted such security interest; or
 - (C) such security interest arises at general law.
- (h) (i) Where by virtue of this Ordinance any right or liability of Belgian Bank, Hong Kong Branch or Belgian Bank where it holds any right or liability on behalf of Belgian Bank, Hong

Kong Branch becomes or is deemed to become a right or liability of ICBC (Asia), ICBC (Asia) and all other persons shall, on and from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that right or liability as if it had at all times been a right or liability of ICBC (Asia); and any legal proceedings or application to any authority existing or pending immediately before the appointed day by or against Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank on behalf of Belgian Bank, Hong Kong Branch may be continued by or against ICBC (Asia).

- (ii) Where any right or liability of Belgian Bank, Hong Kong Branch or Belgian Bank where it holds any right or liability on behalf of Belgian Bank, Hong Kong Branch was before the appointed day the subject of arbitral proceedings to which Belgian Bank, Hong Kong Branch or Belgian Bank on behalf of Belgian Bank, Hong Kong Branch was a party, ICBC (Asia) shall on and from the appointed day automatically be substituted for Belgian Bank, Hong Kong Branch or, as the case may be, Belgian Bank as a party to those proceedings, without the need for consent from any other party or from the arbitrator.
- (i) Any judgment or award obtained by or against Belgian Bank, Hong Kong Branch or Belgian Bank where it has obtained a judgment or award or had a judgment or award held against it on behalf of Belgian Bank, Hong Kong Branch and which is not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against Belgian Bank, Hong Kong Branch or Belgian Bank on behalf of Belgian Bank, Hong Kong Branch, become enforceable by or against ICBC (Asia).
- (j) Any court order which applies to Belgian Bank, Hong Kong Branch or to Belgian Bank on behalf of Belgian Bank, Hong Kong Branch shall on and from the appointed day apply to ICBC (Asia) instead of to Belgian Bank, Hong Kong Branch, or as the case may be, Belgian Bank.

- (k) Nothing in this Ordinance shall terminate or prejudicially affect the appointment, authority, rights or powers of any receiver or of any receiver and manager appointed by Belgian Bank, Hong Kong Branch or Belgian Bank on behalf of Belgian Bank, Hong Kong Branch, whether alone or with others, before the appointed day.
- (l) The Privacy Commissioner may, on and from the appointed day, exercise in respect of ICBC (Asia) any power under the Personal Data (Privacy) Ordinance (Cap. 486) which he could have immediately before the appointed day exercised in respect of Belgian Bank, Hong Kong Branch in respect of a breach or alleged breach by Belgian Bank, Hong Kong Branch of that Ordinance or the data protection principles; but the transfer to, and vesting in, ICBC (Asia) by this Ordinance of the undertakings 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 Belgian Bank, Hong Kong Branch is subject immediately before the appointed day or to a contravention by ICBC (Asia) or Belgian Bank, Hong Kong Branch of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

8. Accounting treatment of ICBC (Asia) and Belgian Bank, Hong Kong Branch

- (1) On and from the appointed day, by virtue of this Ordinance and notwithstanding the provisions of any other Ordinance—
 - (a) the balance sheets and profit and loss accounts of Belgian Bank, Hong Kong Branch and ICBC (Asia) for the accounting period of each of Belgian Bank, Hong Kong Branch and ICBC (Asia) in which the appointed day falls shall be prepared in all respects as if the undertakings had vested or deemed to have vested in ICBC (Asia) pursuant to section 5 on the first day of such accounting period of ICBC (Asia);
 - (b) all property and liabilities of Belgian Bank, Hong Kong Branch vested in ICBC (Asia) by virtue of this Ordinance shall be transferred to ICBC (Asia) at their carrying value in the consolidated accounts of ICBC (Asia) Group (including Belgian Bank, Hong Kong Branch and ICBC (Asia)) on the first day of such accounting period of ICBC (Asia);
 - (c) every existing reserve of Belgian Bank, Hong Kong Branch relating to the property and liabilities vested in ICBC (Asia) by virtue of this Ordinance as consolidated in the group accounts of

ICBC (Asia) Group (including Belgian Bank, Hong Kong Branch and ICBC (Asia)) on the first day of such accounting period of ICBC (Asia) shall be transferred to and for all purposes be and become a reserve of ICBC (Asia); and

- (d) the amount, description and character of every reserve of ICBC (Asia) which shall come into being pursuant to paragraph (c) shall be the same in all respects as those of the corresponding existing reserve of Belgian Bank, Hong Kong Branch immediately before the first day of such accounting period of ICBC (Asia), and all enactments and rules of law shall apply to or in respect of every such reserve of ICBC (Asia) in the same manner in all respects as they applied to or in respect of the corresponding existing reserve of Belgian Bank, Hong Kong Branch immediately before the first day of such accounting period of ICBC (Asia).

(2) Every reference in subsection (1) to an existing reserve shall include a reference to any reserve or similar provision, irrespective of its name or designation (and whether the amount thereof be positive or negative in nature) and, without prejudice to the generality of the foregoing, every such reference shall include a reference to any sums standing to the credit (or debit) of any profit and loss account.

(3) Without prejudice to the generality of subsection (1), any profits or losses of Belgian Bank, Hong Kong Branch earned or incurred after the beginning of the financial year of Belgian Bank, Hong Kong Branch in which the appointed day shall occur, shall, on and from the appointed day, and by virtue of this Ordinance, be treated for all purposes as profits or, as the case may be, losses, of ICBC (Asia).

9. Taxation and revenue matters

(1) For the purposes of the Inland Revenue Ordinance (Cap. 112), on and from the appointed day ICBC (Asia) shall be treated as if it were the continuation of and the same person in law with regard to the undertakings as Belgian Bank, Hong Kong Branch.

(2) Accordingly (and without affecting the generality of subsection (1))—

- (a) a vesting or deemed vesting in ICBC (Asia) of any property or liabilities by virtue of this Ordinance does not constitute a sale or other disposal of or a change in the nature of that property or the liabilities for any purpose under the Inland Revenue Ordinance (Cap. 112);
- (b) the aggregate amount of any losses sustained by Belgian Bank, Hong Kong Branch which are capable of but have not been carried forward and set off against assessable profits of Belgian

Bank, Hong Kong Branch for the purposes of section 19C of the Inland Revenue Ordinance (Cap. 112) as at the end of the last complete financial year of Belgian Bank, Hong Kong Branch are deemed to be losses of ICBC (Asia) and, accordingly, available for set off against the assessable profits of ICBC (Asia) for the purposes of that Ordinance.

(3) The profits or losses of Belgian Bank, Hong Kong Branch treated as profits or losses of ICBC (Asia) in accordance with section 8(3)—

- (a) shall not be taken into account for the purpose of computing the profits and losses of Belgian Bank, Hong Kong Branch which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for any year of assessment; and
- (b) shall be taken into account for the purpose of computing the profits and losses of ICBC (Asia) which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for the year of assessment the basis period for which includes the appointed day.

10. Contracts of employment

(1) Section 7(a) shall apply to a contract for the employment of any person by Belgian Bank, Hong Kong Branch and employment with Belgian Bank, Hong Kong Branch and ICBC (Asia) under any such contract shall be deemed for all purposes to be a single continuing employment.

(2) No director, secretary or auditor of Belgian Bank, Hong Kong Branch shall by virtue only of this Ordinance become a director, secretary or auditor, as the case may be, of ICBC (Asia).

11. Pensions, provident funds and gratuity benefits

(1) The deeds and rules constituting or relating to the pension fund schemes and the provident fund schemes established for the benefit of employees of Belgian Bank, Hong Kong Branch and the gratuity benefits payable by Belgian Bank, Hong Kong Branch shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to Belgian Bank, Hong Kong Branch, or as the case may be, Belgian Bank there were substituted a reference to ICBC (Asia).

(2) No officer or employee of Belgian Bank, Hong Kong Branch who becomes an officer or employee of ICBC (Asia) by virtue of this Ordinance shall, by virtue only of this Ordinance, be entitled to participate in any pension fund scheme of, provident fund scheme of or gratuity benefits payable by ICBC (Asia), and no existing officer or employee of ICBC (Asia) shall, by virtue only of this Ordinance, be entitled to participate in any pension fund

scheme of, provident fund scheme of or gratuity benefits payable by Belgian Bank, Hong Kong Branch.

12. Waiver of prohibition of merger

(1) Any provision contained in any contract or other document to which Belgian Bank, Hong Kong Branch or ICBC (Asia) or any of their respective subsidiaries is a party or to which Belgian Bank is a party but the rights, liabilities, or any chose in action under or established by such contract or other document forms part of the undertakings which prohibits or has the effect of prohibiting the transfer and vesting or deemed transfer and vesting of the undertakings in ICBC (Asia) shall be deemed by this Ordinance to have been waived.

(2) Any provision contained in any contract or other document to the effect that a breach of contract or a default shall occur or be deemed to occur as a result of the transfer and vesting or deemed transfer and vesting of the undertakings in ICBC (Asia), and to which Belgian Bank, Hong Kong Branch or ICBC (Asia) or any of their respective subsidiaries is a party, or to which Belgian Bank is a party but the rights, liabilities, or any chose in action under or established by such contract or other document forms part of the undertakings, shall be deemed by this Ordinance to have been waived.

13. Evidence: books and documents

(1) All books and other documents which would, before the appointed day, have been evidence in respect of any matter for or against Belgian Bank, Hong Kong Branch shall be admissible in evidence in respect of the same matter for or against ICBC (Asia).

(2) In this section, “documents” (文件) has the same meaning as in section 46 of the Evidence Ordinance (Cap. 8).

14. Part III of Evidence Ordinance (Cap. 8)

(1) On and from the appointed day, Part III of the Evidence Ordinance (Cap. 8) shall apply to the banker’s records of Belgian Bank, Hong Kong Branch vested or deemed to be vested in ICBC (Asia) by virtue of this Ordinance, and to entries made in those records before the appointed day, as if such records were the records of ICBC (Asia).

(2) For the purposes of section 20 of the Evidence Ordinance (Cap. 8), banker’s records which are deemed to have become the banker’s records of ICBC (Asia) by virtue of this Ordinance shall be deemed to have been the ordinary banker’s records of ICBC (Asia) at the time of the making of any

entry therein which purports to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

(3) For the purposes of sections 40 and 41 of the Evidence Ordinance (Cap. 8), documents previously in the custody or control of Belgian Bank, Hong Kong Branch shall by virtue of this Ordinance be deemed to be documents previously in the custody or control of ICBC (Asia).

(4) In this section, “banker’s records” (銀行紀錄) shall be construed in accordance with section 2 of the Evidence Ordinance (Cap. 8).

15. Evidence of vesting and transfer

(1) The production of a Government Printer’s copy of this Ordinance shall, for all purposes, be conclusive evidence of the vesting and transfer or deemed vesting and transfer of the undertakings, or any part of them, in ICBC (Asia) in accordance with the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1)—

- (a) a Government Printer’s copy of this Ordinance, together with evidence of publication of notice of the appointed day, shall, in relation to any registered securities transferred to, and vested or deemed to be vested in, ICBC (Asia) by virtue of this Ordinance, operate for all purposes as a duly executed instrument of transfer in respect of the transfer of such registered securities from Belgian Bank, Hong Kong Branch to ICBC (Asia);
- (b) any deed or other document made or executed on or after the appointed day, whereby ICBC (Asia) or Belgian Bank, Hong Kong Branch, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by Belgian Bank, Hong Kong Branch immediately before the appointed day and forming part of the undertakings, whether alone or jointly with any other person, shall be sufficient evidence that the interest of Belgian Bank, Hong Kong Branch in that property is vested or deemed to be vested in ICBC (Asia) under this Ordinance;
- (c) where there is any other transaction or purported transaction by ICBC (Asia) or Belgian Bank, Hong Kong Branch on or after the appointed day in connection with, or in relation to, any property or liabilities which are property or liabilities of Belgian Bank, Hong Kong Branch immediately before that day and forming part of the undertakings, it shall be deemed in favour of any other party to the transaction, or any person claiming

through or under him, that ICBC (Asia) has full power and authority for that transaction as if the property or liabilities were vested or deemed to be vested in it under this Ordinance;

- (d) a certificate given by or on behalf of ICBC (Asia) at any time that any property or liabilities specified in the certificate (which property or liabilities immediately before the appointed day were the property or liabilities of Belgian Bank, Hong Kong Branch) are or, as the case may be, are not, deemed to be vested in ICBC (Asia) under this Ordinance, shall be conclusive evidence for all purposes of the fact so certified.

(3) Nothing in subsection (2)(c) or (d) shall affect the liability of ICBC (Asia) and Belgian Bank, Hong Kong Branch to each other in respect of anything done, or purporting to have been done, by any of them in connection with, or in relation to, any property or liabilities.

(4) In subsection (2)—

- (a) “convey” (轉易) includes mortgage, charge, lease, assent, vest by way of vesting declaration or vesting instrument, disclaimer, release or otherwise assure; and
- (b) “registered securities” (註冊證券) means shares, stocks, debentures, loans, bonds, units of a unit trust scheme or other shares of the investments subject to the trusts of such a scheme, and other securities of any description which are transferable and the holders of which are entered in a register (whether maintained in Hong Kong or not).

(5) Nothing in this section applies to any property falling within section 5(2).

16. Interests in land

(1) The vesting or deemed vesting in ICBC (Asia) of an interest in land by virtue of this Ordinance shall not—

- (a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of section 53(4)(a) or (7)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);
- (b) constitute an assignment or underlease of, or an agreement to assign or underlet, that interest for the purposes of section 6(1)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);
- (c) operate so as to merge any leasehold interest in the reversion expectant on it;

- (d) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest for the purposes of any provision contained in any instrument concerning or affecting that interest;
- (e) operate as a breach of covenant or condition against alienation;
- (f) give rise to any forfeiture, damages or other right of action;
- (g) invalidate or discharge any contract or security interest; or
- (h) extinguish, affect, vary, diminish or postpone any priority of that interest, whether under the Land Registration Ordinance (Cap. 128), at law or in equity.

(2) All existing registrations of any instruments relating to land or interests in land that are in the name of Belgian Bank, Hong Kong Branch or Belgian Bank (whether alone or with any other person), immediately before the appointed day, shall be construed and have effect on and from the appointed day as if the name “Industrial and Commercial Bank of China (Asia) Limited 中國工商銀行(亞洲)有限公司” had been entered on the land register instead of the name of Belgian Bank, Hong Kong Branch, or as the case may be, Belgian Bank.

(3) To enable ICBC (Asia) to complete title, if thought fit, to any property transferred to it and vested or deemed to be vested in it by virtue of this Ordinance by notice of title, deed, instrument or otherwise, or to deduce title, this Ordinance shall be deemed to be an assignment, conveyance, transfer or, as the case may be, an instrument of a general disposition of such property in favour of ICBC (Asia) and the production of a Government Printer’s copy of this Ordinance shall be conclusive evidence of this Ordinance for the purpose of proving or deducing title in favour of ICBC (Asia).

(4) For the purpose of enabling the public to be informed of this Ordinance through public records at the Land Registry in relation to the properties or interests in land affected by this Ordinance, ICBC (Asia) shall register or cause to be registered in the Land Registry a Government Printer’s copy of this Ordinance against a property transferred to it and vested or deemed to be vested in it by virtue of this Ordinance in respect of the vesting of all the properties of Belgian Bank, Hong Kong Branch, or Belgian Bank, in the case of some properties, held on behalf of Belgian Bank, Hong Kong Branch or which form part of the undertakings, transferred to and vested or deemed to be vested in ICBC (Asia) by virtue of this Ordinance.

(5) For the avoidance of doubt, nothing in this section shall exempt ICBC (Asia) and Belgian Bank, Hong Kong Branch from the provisions of the Stamp Duty Ordinance (Cap. 117).

17. Saving for other enactments

Nothing in this Ordinance shall exempt ICBC (Asia) or Belgian Bank, Hong Kong Branch or any subsidiary of ICBC (Asia) or Belgian Bank, Hong Kong Branch from the provisions of any enactment regulating the carrying on of the business of any of them.

18. Saving for companies

Nothing in this Ordinance shall prejudice the powers of ICBC (Asia) to alter its memorandum and articles of association or to dispose of, or deal with, its property, security interests or liabilities or to carry on or discontinue any part of its business; and nothing in this Ordinance shall prejudice the powers of Belgian Bank to alter its memorandum and articles of association or to dispose of, or deal with, its property, security interests or liabilities before the appointed day.

19. Saving

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them.