

INFORMATION NOTE

**Legislative Council Panel on Financial Affairs
Meeting on 1 November 2004**

Citibank (Hong Kong) Limited (Merger) Bill

Introduction

1. The purpose of this note is to inform Members of the proposed Citibank (Hong Kong) Limited (Merger) Bill (the "Bill") and to solicit Members' views. A copy of the draft Bill is attached to this note as Appendix A.

General

2. It is proposed that the Bill will be introduced as a private Member's bill. The Bill will be sponsored by Hon. Dr. David Li Kwok-po, GBS, JP.

Background and Purpose

3. The Bill provides for the transfer of the activities, assets and liabilities which constitute the retail banking business of Citibank N.A. (**Citibank**) located in Hong Kong, currently operated through a branch in Hong Kong (**Citibank, Hong Kong Branch**), to a wholly owned subsidiary within the Citibank group of companies. The subsidiary, Citibank (Hong Kong) Limited (**Citibank (Hong Kong)**), has been incorporated in Hong Kong and is currently a bank authorized under the Banking Ordinance as restricted licence bank. Citibank (Hong Kong) has applied to the Hong Kong Monetary Authority for a full bank licence and it is expected that the application will be approved shortly. Citibank (Hong Kong) is a wholly owned subsidiary of Citibank and is a member of the Citibank group of companies of which Citigroup Inc. is the ultimate holding company.
4. Bank mergers or major reorganisations in Hong Kong are typically effected either by transfer of relevant property and liabilities by way of novation or assignment or by introducing a Bill to the Legislative Council which transfers relevant property and liabilities of the merging bank which are governed by Hong Kong law. Given the large number of agreements between Citibank, Hong Kong Branch and its customers and other counterparties, it will not be feasible to transfer such property and liabilities by way of novation and assignment to Citibank (Hong Kong). As such, a statutory Merger as provided by the Bill will be a preferred option.
5. Citibank has been operating in Hong Kong for more than 100 years. The retail banking group employs about 1,600 staff and offers a complete range of world-class financial products and services to approximately 180,000 customers in 30 locations in the territory. The decision to incorporate its retail banking business in a Hong Kong subsidiary comes as part of Citibank's strategy to grow its international businesses and the incorporation reaffirms the bank's long-term commitment to Hong Kong, its customers, employees and business partners.
6. The Bill has advantages for the customers of Citibank, Hong Kong Branch who will have the reassurance that all Hong Kong law governed property and liabilities have been properly transferred to Citibank (Hong Kong). Such customers will also avoid the inconvenience of having to execute new customer documentation. Further, the basis of the transfer of such property and liabilities from Citibank, Hong Kong Branch to Citibank (Hong Kong) will be publicly known. After the transfer, Citibank, Hong Kong Branch will consist mainly of

private banking business and commercial banking business which will continue to be carried on in the same manner as before.

7. Since the early 1980s the Legislative Council has passed a number of ordinances implementing reorganisations and mergers of banks and other authorized institutions. The Bill is based on the form of those bank merger ordinances which were considered to be most analogous to the proposed Citibank reorganisation. Differences from analogous prior Ordinances are matters of technical drafting, reflecting the particular circumstances of this bank merger.

The Bill

8. The purpose of the Bill is to transfer the Hong Kong retail banking business of Citibank currently operated through Citibank, Hong Kong Branch to Citibank (Hong Kong). Citibank is a national banking association organized under the laws of the United States and is authorized under the Banking Ordinance to carry out the business of banking in Hong Kong. Citibank (Hong Kong) is a wholly owned subsidiary of Citibank incorporated in Hong Kong and authorized under the Banking Ordinance.
9. The Bill provides for the vesting of the retail banking business of Citibank which is governed by or subject to Hong Kong law in Citibank (Hong Kong) on the appointed day with the exception of a limited range of excluded property and liabilities as explained in 10(a) below. The appointed day will be decided in consultation with the Hong Kong Monetary Authority.
10. The key provisions of the proposed Bill are similar to those of recently enacted merger bills and are summarised in the following paragraphs:
 - (a) **Clause 2** sets out the definitions of certain terms used in the Bill. In particular, there is a definition of "excluded property and liabilities". A limited range of property and liabilities is specifically excluded. The Bill does not provide a right for Citibank (Hong Kong) to amend these classes of property and liabilities. Paragraphs (a) to (c) correspond to exclusions in previous bank merger bills. Paragraph (d) excludes the activities of Citibank, Hong Kong Branch which relate in whole or in part to the corporate banking business, the private banking business, or any other business of Citibank, Hong Kong Branch other than the retail banking business. It is necessary to include this exclusion in order to ensure that only activities relating to the retail banking business of Citibank, Hong Kong Branch pass to Citibank (Hong Kong) under the Bill.
 - (b) **Clause 3** provides that the board of directors of Citibank (Hong Kong) may determine an appointed day upon which the merger will take effect and that such appointed day must be notified by both Citibank (Hong Kong) and Citibank, Hong Kong Branch in the Gazette.
 - (c) **Clause 4** is the main transfer and vesting provision in the Bill. It provides that the undertakings of Citibank, Hong Kong Branch (not including the "excluded property and liabilities") shall transfer to and vest in Citibank (Hong Kong) on the appointed day as if Citibank (Hong Kong) were the same person in law as Citibank, Hong Kong Branch. The clause also provides that where the transfer and vesting of property and liabilities is governed otherwise than by the laws of Hong Kong, Citibank, Hong Kong Branch shall, if required by Citibank (Hong Kong) take all necessary steps to secure the effective transfer and vesting of such property and liabilities in Citibank (Hong Kong) as soon as practicable after the appointed day. We do not foresee any

material problems in doing so as such property and liabilities are largely supply contracts or within our control.

- (d) **Clause 5** deals with property which, before the merger, is held by Citibank, Hong Kong Branch in a capacity as a trustee. It provides that in such case, the relevant document should be read as if references to Citibank, Hong Kong Branch were references to Citibank (Hong Kong).
- (e) **Clause 6(a) to (k)** provide that all contracts and agreements made with, given to or by or addressed to Citibank, Hong Kong Branch and insurance policies in which Citibank, Hong Kong Branch has an interest) shall, after the merger takes effect, be construed as if Citibank (Hong Kong) had been the original party instead of Citibank, Hong Kong Branch (or Citibank) and, accordingly, all references to Citibank, Hong Kong Branch (or Citibank) must be construed as if they were to Citibank (Hong Kong). **Clauses 6(a) to (k)** also provide for accounts, negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgements to be transferred to Citibank (Hong Kong) upon the appointed day. **Clauses 6(g)(v) and (vi)** are provisions which seek to reflect the previous concerns in respect of other bank mergers expressed by Members of the Legislative Council regarding the possible increase of security or charges over customers' assets as a result of the merger.
- (f) **Clause 6(l)** provides that the transfer of personal data from Citibank, Hong Kong Branch to Citibank (Hong Kong) under the Bill shall not result in a breach of any duty of confidentiality or a contravention of the Personal Data (Privacy) Ordinance. The Privacy Commissioner may exercise in respect of Citibank (Hong Kong) any power which he could, before the merger, have exercised in respect of Citibank, Hong Kong Branch.
- (g) **Clause 7** provides for the accounting treatment of Citibank (Hong Kong) following the merger. However unlike the case in some recently enacted merger ordinances, the Bill does not seek the backdating of accounting treatment.
- (h) **Clause 8** provides for the taxation arrangements following the merger. It also provides that for the purposes of the Inland Revenue Ordinance, Citibank (Hong Kong) shall be treated as if it were the same person in law with regard to the undertakings as Citibank, Hong Kong Branch on and from the appointed day and any profits and losses arising from the undertakings of Citibank, Hong Kong Branch transferred to Citibank (Hong Kong) on or after the appointed day shall be treated as profits and losses of Citibank (Hong Kong). **Clause 8** is intended to have a similar effect to the provisions dealing with taxation matters in previous bank merger ordinances. The effect of this provision is consistent with Government policy on taxation, as stated in the context of recently enacted bank merger ordinances.
- (i) **Clause 9** provides that any provision contained in any contract or other document to which Citibank, Hong Kong Branch or Citibank (Hong Kong) or any of their respective subsidiaries is a party which prohibits or has the effect of prohibiting the merger or under which an event of default or a termination event occurs as a result of the merger shall be deemed to have been waived by the Bill, once it is enacted and comes into effect.
- (j) **Clauses 10 to 12** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against Citibank, Hong Kong Branch which, when transferred by the Bill (once it is enacted and comes into effect), becomes

admissible in evidence after the merger in respect of the same matter for or against Citibank (Hong Kong). **Clause 11** provides that, for the purposes of the Evidence Ordinance, banker's records of Citibank, Hong Kong Branch vested in Citibank (Hong Kong) by the Bill shall be treated as if these were always banker's records of Citibank (Hong Kong).

- (k) **Clause 13** deals with the effect of the merger on interests in land in Hong Kong held by Citibank, Hong Kong Branch and provides that the vesting of the Citibank, Hong Kong Branch's interests in land in Citibank (Hong Kong) pursuant to the merger does not constitute an acquisition, assignment, transfer or parting with possession under the Landlord and Tenant (Consolidation) Ordinance. **Clause 13** also provides that the vesting in Citibank (Hong Kong) of Citibank, Hong Kong Branch's interests in land under the merger will not affect or extinguish any priority under the Land Registration Ordinance. For the avoidance of doubt, the Bill stipulates that nothing in **Clause 13** exempts either Citibank (Hong Kong) or Citibank, Hong Kong Branch from the provisions of the Stamp Duty Ordinance.
- (l) **Clause 14** states that nothing in the Bill shall exempt Citibank, Hong Kong Branch or Citibank (Hong Kong) from any of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.
- (m) **Clause 15** provides that the Bill does not prevent Citibank (Hong Kong) from amending its memorandum and articles of association or dealing with its property or business generally. **Clause 15** also provides that nothing in the Bill prevents Citibank from altering its memorandum and articles of association or dealing with its property generally before the appointed day.
- (n) **Clause 16** provides that nothing in the Bill (once it is enacted and comes into effect) shall affect the rights of the Central Authorities or the Government under the Basic Law and other laws.

Taxation

- 11. As mentioned above, Clauses 6, 7 and 8 have the effect of deeming Citibank (Hong Kong) as one and the same as Citibank, Hong Kong Branch in law in so far as the undertakings are concerned, and allowing any profits and losses of Citibank, Hong Kong Branch arising from the undertakings to be treated as the profits and losses of Citibank (Hong Kong) from the appointed day under the Bill.

Employees

- 12. The Bill does not operate to transfer any employees because all relevant employees are already employed by Citibank (Hong Kong).

Consultation

- 13. The administration is in support of the Bill. The Hong Kong Monetary Authority, the Financial Services and the Treasury Bureau, the Department of Justice, the Commissioner of Inland Revenue, the Companies Registrar, the Land Registrar, the Home Affairs Bureau, the Mandatory Provident Fund Schemes Authority and the Privacy Commissioner for Personal Data have been consulted in relation to the Bill. Comments given by them have been accommodated. Accordingly, consultation with relevant government departments is at an advanced stage and further significant comments from the administration are not expected.

Legislative Timetable

14. Subject to the obtaining of the President's Ruling and the Chief Executive's consent, we aim to publish the finalized version of the Bill in the Gazette around 26 November and introduce it to the Legislative Council in December.

Enquiries

15. Any enquiries about this brief can be directed to Mr. Andrew Burns at the Office of Legislative Councillor, Hon. Dr. David Li Kwok-po, GBS, JP at telephone number 2842 3449 or fax number 2526 1909.

Hon. Dr. David Li Kwok-po, GBS, JP
25 October 2004

CITIBANK (HONG KONG) LIMITED (MERGER) BILL

CONTENTS

Clause		Page
1.	Short title	2
2.	Interpretation	2
3.	Notice of appointed day	6
4.	Vesting of the undertakings in Citibank (Hong Kong)	7
5.	Trust property	7
6.	Supplementary provisions	8
7.	Accounting treatment of Citibank (Hong Kong) and Citibank, Hong Kong Branch	17
8.	Taxation and revenue matters	18
9.	Waiver of prohibition of merger	18
10.	Evidence: books and documents	19
11.	Part III of Evidence Ordinance (Cap. 8)	19
12.	Evidence of transfer and vesting	20
13.	Interests in land	22
14.	Saving for other enactments	24
15.	Saving for companies	24
16.	Saving	25

A BILL

To

Provide for the vesting in Citibank (Hong Kong) Limited (花旗銀行(香港)有限公司) of the undertakings of the Hong Kong branch of Citibank, N.A. and for other related purposes.

Preamble

WHEREAS –

- (a) Citibank (Hong Kong) Limited (花旗銀行(香港)有限公司) (hereinafter called "Citibank (Hong Kong)") 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);
- (b) Citibank, N.A. (花旗銀行) (hereinafter called "Citibank") is a national banking association organized under the laws of the United States having its principal place of business in the State of New York and is a bank authorized under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong and elsewhere;
- (c) Citibank operates that part of its business which constitutes the retail banking business in Hong Kong through a branch in Hong Kong (hereinafter called "Citibank, Hong Kong Branch");
- (d) Citibank (Hong Kong) is a wholly owned subsidiary of Citibank and is a member of the Citibank group of companies of which Citigroup Inc. is the ultimate holding company;
- (e) for the better conduct of the businesses of Citibank (Hong Kong) and Citibank, it is expedient that the undertakings of Citibank, Hong Kong Branch which constitute the retail banking business of

Citibank, Hong Kong Branch in Hong Kong be merged into, and succeeded by, Citibank (Hong Kong) and that such merger and succession should occur by means of a transfer of the undertakings of Citibank, Hong Kong Branch which constitute the retail banking business of Citibank, Hong Kong Branch in Hong Kong to Citibank (Hong Kong);

- (f) in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of Citibank, Hong Kong Branch which constitute the retail banking business of Citibank, Hong Kong Branch in Hong Kong, it is expedient that the said undertakings be transferred to Citibank (Hong Kong) by this Ordinance without interference with the conduct and continuity of the business of Citibank, Hong Kong Branch.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Citibank (Hong Kong) 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;

"banking or other financial services" (銀行或其他財務服務) includes the taking of deposits, the provision of payment and remittance services, the provision of facilities for the purchase or sale of foreign currencies, securities or other financial instruments and the incurring of financial exposure mentioned in section 81(2) of the Banking Ordinance (Cap. 155);

"Citibank" (花旗) means Citibank, N.A. (花旗銀行);

"Citibank (Hong Kong)" (花旗(香港)) means Citibank (Hong Kong) Limited (花旗銀行(香港)有限公司);

"Citibank, Hong Kong Branch" (花旗香港分行) means Citibank acting through each of the places in Hong Kong at which Citibank carries on business;

"corporate banking business" (公司銀行業務) means –

- (a) the business carried on by Citibank, Hong Kong Branch for the provision of banking or other financial services to companies but does not include such services so provided as part of its retail banking business; and
- (b) all existing property and liabilities of whatsoever nature as recorded in or created by any of the books and records of Citibank, Hong Kong Branch that are kept in respect of the corporate banking business of Citibank, Hong Kong Branch;

"customer" (客戶) means any person having a banking account or other dealing, transaction or arrangement with Citibank, 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 and liabilities" (除外財產及法律責任) means –

- (a) the common seal of Citibank, Hong Kong Branch;
- (b) documents required to be kept by Citibank, Hong Kong Branch pursuant to the Companies Ordinance (Cap. 32) and other applicable law;
- (c) any liability recorded in the books of Citibank, Hong Kong Branch as being due to Citibank under the caption "Profit/Loss Awaiting Remittance"; and

- (d) all existing property, reserves and liabilities of Citibank, Hong Kong Branch of whatsoever nature as recorded in or created by any of the books and records of Citibank, Hong Kong Branch which relate in whole or in part to the corporate banking businesses, the private banking business or any other businesses of Citibank, Hong Kong Branch other than to the retail banking business;

"existing" (現有) means existing, outstanding or in force immediately prior to the appointed day;

"liabilities" (法律責任) means 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);

"private banking business" (私人銀行業務) means –

- (a) the business carried on by Citibank, Hong Kong Branch for the provision of banking or other financial services to individuals who are considered by Citibank, Hong Kong Branch to be of high net worth but does not include such services so provided as part of its retail banking business; and
- (b) all existing property and liabilities of whatsoever nature as recorded in or created by any of the books and records of Citibank, Hong Kong Branch that are kept in respect of the private banking business of Citibank, Hong Kong Branch;

"property" (財產) means property and assets of every description wheresoever situate and rights of every description (whether present or future, actual or contingent) including, without limitation, rights as beneficiary under trust or nominee arrangements and includes property held on trust or in a

fiduciary capacity and security interests, benefits and powers of every description;

"Registrar of Companies" (公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32);

"retail banking business" (零售銀行業務) means –

- (a) the business carried on by Citibank, Hong Kong Branch for the provision of banking or other financial services to individuals, firms, partnerships, unincorporated businesses or companies and acting as an insurance agent within the meaning of the Insurance Companies Ordinance (Cap. 41) which do not form part of the corporate banking business, the private banking business or any other businesses of Citibank, Hong Kong Branch; and
- (b) all existing property and liabilities of whatsoever nature as recorded in or created by any of the books and records of Citibank, Hong Kong Branch that are kept in respect of the retail banking business of Citibank, Hong Kong Branch;

"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(4) of the Companies Ordinance (Cap. 32);

"undertakings" (業務) means the businesses and all existing property, reserves and liabilities of Citibank, Hong Kong Branch of whatsoever nature as recorded in or created by any of the books and records of Citibank, Hong Kong Branch (other than any excluded property and liabilities).

(2) Any reference in this Ordinance to property or liabilities of Citibank, Hong Kong Branch is a reference to property or liabilities (other than the excluded property and liabilities) to which Citibank, Hong Kong Branch is immediately prior to the appointed day 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 Citibank, Hong Kong Branch, and whether Citibank, 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 Citibank (Hong Kong) may appoint a day for the purposes of this Ordinance.

(2) Citibank (Hong Kong) and Citibank, 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, Citibank (Hong Kong) and Citibank, 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. Vesting of the undertakings in Citibank (Hong Kong)

(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, Citibank (Hong Kong) to the intent that Citibank (Hong Kong) shall succeed to the undertakings as if in all respects Citibank (Hong Kong) were the same person in law as Citibank, Hong Kong Branch.

(2) Where the transfer and vesting of any property and liabilities is governed otherwise than by the laws of Hong Kong, Citibank, Hong Kong Branch shall, if Citibank (Hong Kong) so requires, so soon as is practicable after the appointed day, take all necessary steps for securing the effective transfer and vesting thereof in Citibank (Hong Kong) and, pending such transfer and vesting, Citibank, Hong Kong Branch shall hold any such property and liabilities in trust absolutely for Citibank (Hong Kong).

5. Trust property

(1) Any property vested or deemed to be vested in Citibank (Hong Kong) by virtue of this Ordinance which immediately prior to the appointed day was held by Citibank, Hong Kong Branch, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement 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 Citibank (Hong Kong) 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 Citibank, Hong Kong Branch, in any such fiduciary capacity as is referred to in subsection (1), and any provision in such instrument or order, or any existing contract or arrangement, for the payment to, or retention by, Citibank, 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 Citibank, Hong Kong Branch not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, Citibank, Hong Kong Branch, there were substituted a reference to Citibank (Hong Kong) provided always that this subsection shall not prevent Citibank (Hong Kong) from varying the remuneration or scale of fees payable in accordance with the terms of the relevant instrument or order.

6. 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, the following provisions of this section shall have effect other than in relation to the excluded property and liabilities –

- (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 undertakings entered into by, made with, given to or by or addressed to Citibank, Hong Kong

Branch or (in so far as they are) entered into by, made with, given to or by or addressed to Citibank and insurance policies in which Citibank, Hong Kong Branch has an interest (and in any such case where the rights, liabilities, interest or any chose in action under or established by such instruments forms part of the 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) Citibank (Hong Kong) had been a party thereto instead of Citibank, Hong Kong Branch or, as the case may be, Citibank;
- (ii) for any reference (however worded and whether express or implied) to Citibank, Hong Kong Branch or, as the case may be, Citibank there were substituted, as respects anything falling to be done on or after the appointed day, a reference to Citibank (Hong Kong); and
- (iii) any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of Citibank, Hong Kong Branch or, as the case may be, Citibank were, as respects anything falling to be done on or after the appointed day, a reference to the directors of Citibank (Hong Kong) or, as the case may require, to such director, officer or employee of Citibank (Hong Kong) as Citibank (Hong Kong) may appoint for that purpose or, in default of appointment, to the director, officer or employee of Citibank (Hong Kong) who corresponds as

nearly as may be to the first-mentioned director, officer or employee.

- (b) Paragraph (a)(ii) shall, subject to the provisions of section 14, apply to any statutory provision, to any provision of any existing contract to which Citibank, Hong Kong Branch or, as the case may be, Citibank 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 Citibank, Hong Kong Branch and a customer shall, on the appointed day, be transferred to Citibank (Hong Kong) and become an account between Citibank (Hong Kong) 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 undertakings entered into by, made with, given to or by or addressed to Citibank, 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 Citibank, 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 Citibank (Hong Kong) and such customer:

Provided that nothing in this Ordinance shall affect any right of Citibank (Hong Kong) 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 Citibank, Hong Kong Branch or (in so far as they are) given to or by Citibank on behalf of Citibank, 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 Citibank (Hong Kong) or, as the case may be, to or by Citibank (Hong Kong) 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, Citibank, Hong Kong Branch or Citibank on behalf of Citibank, Hong Kong Branch, or payable at any place of business of Citibank, Hong Kong Branch, whether so drawn, given, accepted or endorsed prior to, 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 Citibank (Hong Kong), or were payable at the same place of business of Citibank (Hong Kong).

- (f) The custody of any document or record, goods or other thing held by Citibank, Hong Kong Branch as bailee shall pass to Citibank (Hong Kong) on the appointed day, and the rights and obligations of Citibank, 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 Citibank (Hong Kong).
- (g)
 - (i) Any security interest held immediately prior to the appointed day by Citibank, Hong Kong Branch, or by a nominee or agent of or trustee for Citibank, 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, Citibank (Hong Kong), and be available to Citibank (Hong Kong) (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 Citibank (Hong Kong) in accordance with the provisions of this Ordinance and any liability thereby secured, Citibank (Hong Kong) shall be entitled to the rights and priorities and be subject to the obligations and incidents to which Citibank, 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 Citibank, Hong Kong Branch and Citibank (Hong Kong), in respect of which Citibank, Hong Kong Branch or Citibank (Hong Kong), or a nominee or agent of or trustee for Citibank, Hong Kong Branch or Citibank (Hong Kong) holds a security interest, any liability referred to in subparagraph (ii) shall, for the purpose of enforcing or realizing that security interest, be deemed to continue in effect notwithstanding the vesting of the undertakings in Citibank (Hong Kong).

- (iv) Any security interest referred to in subparagraph (i), (ii) or (iii) and which extends to future advances or liabilities shall, on and from the appointed day, be available to Citibank (Hong Kong) (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 liabilities to, Citibank, Hong Kong Branch or Citibank (Hong Kong) were secured thereby immediately prior to that day.
- (v) Notwithstanding subparagraph (i), where immediately prior to the appointed day, any security interest would not be available to Citibank (Hong Kong) as security for the payment or discharge of any liability owing to it or to Citibank, Hong Kong Branch as security for the payment or discharge of any liability owing to it,

such security interest shall not become available to Citibank (Hong Kong) 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) Citibank (Hong Kong) 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 prior to the appointed day, Citibank (Hong Kong) 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 Citibank, 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, Citibank (Hong Kong) 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) Citibank (Hong Kong) 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 Citibank, Hong Kong Branch or Citibank where it holds any right or liability on behalf of Citibank, Hong Kong Branch becomes or is deemed to become a right or liability of Citibank (Hong Kong), Citibank (Hong Kong) 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 Citibank (Hong Kong); and any legal proceedings or application to any authority existing or pending immediately prior to the appointed day by or against Citibank, Hong Kong Branch or, as the case may be, Citibank may be continued by or against Citibank (Hong Kong).
- (ii) Where any right or liability of Citibank, Hong Kong Branch or Citibank where it holds any right or liability on behalf of Citibank, Hong Kong Branch was prior to the appointed day the subject of arbitral or legal proceedings to which Citibank, Hong Kong Branch or Citibank on behalf of Citibank, Hong Kong Branch was a party, Citibank (Hong Kong) shall on and from the appointed day automatically be substituted for Citibank, Hong Kong Branch or, as the case may be, Citibank 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 Citibank, Hong Kong Branch or Citibank where it has obtained a judgment or award or had a judgment or award held against it on behalf of Citibank, Hong Kong Branch and not fully satisfied prior to the appointed day shall on that day, to the extent to which it is enforceable by or against Citibank, Hong Kong Branch or Citibank on behalf of Citibank, Hong Kong Branch, become enforceable by or against Citibank (Hong Kong).
- (j) Any court order which applies to Citibank, Hong Kong Branch or to Citibank on behalf of Citibank, Hong Kong Branch shall on and from the appointed day apply to Citibank (Hong Kong) instead of to Citibank, Hong Kong Branch or, as the case may be, Citibank.
- (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 Citibank, Hong Kong Branch, whether alone or with others, prior to the appointed day.
- (l) The Privacy Commissioner may, on and from the appointed day, exercise in respect of Citibank (Hong Kong) any power under the Personal Data (Privacy) Ordinance (Cap. 486) which he could have immediately prior to the appointed day exercised in respect of Citibank, Hong Kong Branch in respect of a breach or alleged breach by Citibank, Hong Kong Branch of that Ordinance or the data protection principles; but the transfer to, and vesting in, Citibank (Hong Kong) by this Ordinance of the

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

7. Accounting treatment of Citibank (Hong Kong) and Citibank, 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 undertakings of Citibank, Hong Kong Branch shall be transferred to Citibank (Hong Kong) at their carrying value in the accounts of Citibank, Hong Kong Branch as stated in them immediately prior to the appointed day; and
- (b) the amount, description and character of every reserve of Citibank (Hong Kong) which forms part of or otherwise relates to the undertakings shall be the same in all respects as those of the corresponding existing reserve of Citibank, Hong Kong Branch immediately prior to the appointed day, and all enactments and rules of law shall apply to or in respect of every such reserve of Citibank (Hong Kong) in the same manner in all respects as they applied to or in respect of the corresponding existing reserve of Citibank, Hong Kong Branch immediately prior to the appointed day.

(2) Every reference in subsection (1)(b) to an existing reserve of Citibank, Hong Kong Branch 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.

8. Taxation and revenue matters

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

(2) Accordingly (and without affecting the generality of subsection (1)) a vesting or deemed vesting in Citibank (Hong Kong) of any property or liability by virtue of this Ordinance does not constitute a sale or other divestiture of or a change in the nature of that property or the liability for any purpose under the Inland Revenue Ordinance (Cap. 112).

(3) The profits or losses of Citibank, Hong Kong Branch arising in the year of assessment in which the appointed day occurs, and for the period ended immediately prior to the appointed day, shall be taken into account for the purpose of computing the profits of Citibank, Hong Kong Branch which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for the year of assessment in which the appointed day occurs.

(4) The profits or losses arising from the undertakings of Citibank, Hong Kong Branch transferred to Citibank (Hong Kong) for any period commencing on or after the appointed day shall be taken into account for the purpose of computing the profits of Citibank (Hong Kong) which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112).

9. Waiver of prohibition of merger

(1) Any provision contained in any contract or other document to which Citibank, Hong Kong Branch or Citibank (Hong Kong) or any of their

respective subsidiaries is a party or to which Citibank 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 of Citibank, Hong Kong Branch which prohibits or has the effect of prohibiting the transfer and vesting or deemed transfer and vesting of the undertakings of Citibank, Hong Kong Branch in Citibank (Hong Kong) shall be deemed by this Ordinance to have been waived.

(2) Any provision contained in any contract or other document or other agreement 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 of Citibank, Hong Kong Branch in Citibank (Hong Kong), and to which Citibank, Hong Kong Branch or Citibank (Hong Kong) or any of their respective subsidiaries is a party or to which Citibank is a party but the rights, liabilities or any chose in action under or established by such contract or other document or other agreement forms part of the undertakings of Citibank, Hong Kong Branch, shall be deemed by this Ordinance to have been waived.

10. Evidence: books and documents

(1) All books and other documents which would, prior to the appointed day, have been evidence in respect of any matter for or against Citibank, Hong Kong Branch shall be admissible in evidence in respect of the same matter for or against Citibank (Hong Kong) so far as they relate to the undertakings.

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

11. 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 Citibank, Hong Kong Branch vested or deemed to be vested in Citibank (Hong Kong) by virtue of this

Ordinance, and to entries made in those records prior to the appointed day, as if such records were the records of Citibank (Hong Kong).

(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 Citibank (Hong Kong) by virtue of this Ordinance shall be deemed to have been the ordinary banker's records of Citibank (Hong Kong) at the time of the making of an entry therein which purports to have been made prior to 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 Citibank, Hong Kong Branch that relate to the undertakings shall by virtue of this Ordinance be deemed to be documents previously in the custody or control of Citibank (Hong Kong).

(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).

12. Evidence of transfer and vesting

(1) The production of a Government Logistics Department's copy of this Ordinance shall, for all purposes, be conclusive evidence of the transfer and vesting or deemed transfer and vesting of the undertakings or any part of them of Citibank, Hong Kong Branch in Citibank (Hong Kong) in accordance with the provisions of this Ordinance.

- (2) Without prejudice to the generality of subsection (1) –
- (a) a Government Logistics Department'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, Citibank (Hong Kong) 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 Citibank, Hong Kong Branch to Citibank (Hong Kong);

- (b) any deed or other document made or executed on or after the appointed day, whereby Citibank (Hong Kong) or Citibank, 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 Citibank, Hong Kong Branch immediately prior to 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 Citibank, Hong Kong Branch in that property is vested or deemed to be vested in Citibank (Hong Kong) under this Ordinance;
- (c) where there is any other transaction or purported transaction by Citibank (Hong Kong) or Citibank, 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 Citibank, Hong Kong Branch immediately prior to 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 Citibank (Hong Kong) 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 Citibank (Hong Kong) at any time that any property or liabilities specified in the

certificate (which property or liabilities immediately prior to the appointed day are the property or liabilities of Citibank, Hong Kong Branch) are or, as the case may be, are not, deemed to be vested in Citibank (Hong Kong) 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 Citibank (Hong Kong) and Citibank, Hong Kong Branch to one another 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, disclaim, 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 elsewhere).

(5) Nothing in this section applies to any property and liabilities falling within section 4(2).

13. Interests in land

(1) The vesting or deemed vesting in Citibank (Hong Kong) of an interest in land by virtue of this Ordinance shall not where applicable –

(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;
- (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 which form part of or otherwise relate to the undertakings that are in the name of Citibank, Hong Kong Branch, or Citibank (whether alone or with any other person) immediately prior to the appointed day shall be construed and have effect on and from the appointed day as if the name "Citibank (Hong Kong) Limited (花旗銀行(香港)有限公司)" had been entered on the land register instead of the name of Citibank, Hong Kong Branch or, as the case may be, Citibank.

(3) To enable Citibank (Hong Kong) 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 Citibank (Hong Kong) and the production of a Government Logistics Department's copy of this Ordinance shall be conclusive evidence of this Ordinance for the purpose of proving or deducing title in favour of Citibank (Hong Kong).

(4) For the purpose of enabling the public to be informed of this Ordinance through the public records at the Land Registry in relation to the properties or interests in land affected by this Ordinance, Citibank (Hong Kong) shall register or cause to be registered in the Land Registry a Government Logistics Department'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 Citibank, Hong Kong Branch, or Citibank, in the case of some properties, held on behalf of or which form part of the undertakings of Citibank, Hong Kong Branch transferred to and vested or deemed to be vested in Citibank (Hong Kong) by virtue of this Ordinance.

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

14. Saving for other enactments

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

15. Saving for companies

Nothing in this Ordinance shall prejudice the powers of Citibank (Hong Kong) 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 Citibank to alter its memorandum and articles of

association or to dispose of, or deal with, its property, security interests or liabilities prior to the appointed day.

16. 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.

Explanatory Memorandum

The purpose of this Bill is to transfer the undertakings of the Hong Kong branch of Citibank, N.A. to Citibank (Hong Kong) Limited. Citibank, N.A. is a bank authorized under the Banking Ordinance (Cap. 155) and is organized under the laws of the United States.

2. The Bill provides for the vesting or deemed vesting of the undertakings of the Hong Kong branch of Citibank, N.A. in Citibank (Hong Kong) Limited on the appointed day (clause 4). It also contains a number of supplementary provisions relating, inter alia, to the effect of the vesting in relation to trust property (clause 5), the accounting treatment for the Hong Kong branch of Citibank, N.A. (clause 7), taxation matters (clause 8), the relationship with customers, borrowers and other parties (clauses 6 and 9), evidence (clauses 10 to 12) and interests in land (clause 13).

ALLEN & OVERY
Solicitors for
Citibank, N.A.