

## MEMORANDUM

### LEGISLATIVE COUNCIL PANEL ON FINANCIAL AFFAIRS MEETING ON 17 DECEMBER 2004 INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED (MERGER) BILL

#### 1. INTRODUCTION

1.1 The purpose of this memorandum is to:

- (i) inform Members of the proposed Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill (the *Bill*);
- (ii) provide the Members with background information relating to the Bill; and
- (iii) solicit Members' views on the Bill.

1.2 A summary of the key provisions of the Bill and a copy of the draft Bill are attached to this memorandum as Appendix A and Appendix B respectively.

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

#### 2. EXECUTIVE SUMMARY

2.1 The Bill provides for the merger of the Hong Kong Branch of Belgian Bank (*BBHK*) with Industrial and Commercial Bank of China (Asia) Limited (*ICBC (Asia)*) (the *Merger*). Following ICBC (Asia)'s acquisition of all of the outstanding shares of BBHK, effective 30 April 2004, BBHK and its subsidiaries are now members of the ICBC (Asia) Group.

2.2 The intention of the Merger is to allow ICBC (Asia) and BBHK to consolidate their largely complementary banking businesses and become more competitive in the increasingly consolidated Hong Kong banking market. Other reasons for the Merger include:

- (a) creating a stronger, more competitive bank (with bigger market share, a larger balance sheet, more stability, higher credit rating and lower funding costs);
- (b) unifying ICBC (Asia) and BBHK resulting in harmonised branding and identity;
- (c) granting customers access to a wider branch network and an increased range of products;
- (d) enhancing earnings through diversified clientele and reducing costs through economies of scale and better synergy; and

- (e) expanding the business creating jobs and demonstrating ICBC (Asia)'s commitment to the Hong Kong community.

2.3 Due to overlapping functions, it is likely that around five BBHK branches and ICBC (Asia) branches will be merged and at the same time, it is anticipated that some new branches will be opened in areas where neither BBHK nor ICBC (Asia) has a presence. The result of this should be that the total number of branches of the combined business would remain at the same level in the first 2-3 years.

2.4 In the longer term following the Merger, ICBC (Asia) anticipates enlarging its branch network within the territory from the 42 branches that will exist immediately prior to the Merger (20 of ICBC (Asia) and 22 of BBHK) to 60 branches.

2.5 As the customer profile of the two banks is quite different in that ICBC (Asia) focuses on corporate banking and large commercial clients while BBHK focuses on small and medium enterprises (SME's) and the retail banking sector, the merger of the two banks will create a full scale commercial bank which is able to service customers ranging from individuals to large corporates. This should enhance the competitive position of ICBC (Asia) in the Hong Kong market.

2.6 Following the announcement of the Merger, the senior management of ICBC (Asia) and BBHK have visited Belgian Bank's larger customers to inform them of the strategic intent of the Merger and to provide them with assurances that service levels will be maintained. The customers that were visited were generally comfortable with the Merger and some welcomed the move with an expectation that the combined organization would be able to provide them with better banking support in China. Other customers have been informed about the Merger through daily interaction in branches, business meetings, visits, and mass media reports. The feedback received by ICBC (Asia) has been very positive and encouraging.

### **3. LEGAL BACKGROUND TO THE BILL**

3.1 In a number of jurisdictions, such as the United States, Japan and Switzerland, two banks can merge with one another by way of "universal succession". However Hong Kong company law does not have such a concept as universal succession. Accordingly bank mergers in Hong Kong may only be effected either by transfer of all property and liabilities by way of novation or assignment or by introducing a bill to the Legislative Council to effect an ordinance transferring all property and liabilities of the merging bank which are governed by Hong Kong law. Given the large number of outstanding agreements between BBHK and its customers, it is not practical to transfer such assets and liabilities by way of novation and assignment to ICBC (Asia).

### **4. TAXATION CONSIDERATIONS**

4.1 Clauses 8 and 9 of the Bill have the effect of deeming ICBC (Asia) and BBHK as one and the same as BBHK in law and allowing any profits and losses of BBHK to be treated as the profits and losses of ICBC (Asia) from the appointed day under the Bill.

4.2 In previously enacted merger bills, the Government has allowed the merged entity, for tax assessment purposes, to carry forward any losses accumulated by any of the merging entities. As BBHK does not have any accumulated losses for tax assessment purposes, the Bill should not result in any loss of Government's revenue.

## **5. EMPLOYEE RETENTION**

5.1 The Merger will not result in any material level of employee redundancies.

5.2 As a result of the harmonisation and integration process, synergies will be achieved that are likely to lead to a surplus of employees in certain areas. It is intended that these employees will be re-deployed to areas in the business that are experiencing a shortage in personnel.

5.3 ICBC (Asia) will provide "on-the-job" training to those employees who may not be able to take up the new jobs immediately. If necessary, ICBC (Asia) may sponsor employees to take external job-related training courses. A special task force charged with the task of coordinating this process will be established in the human resources department of ICBC (Asia).

5.4 Change management programmes will be implemented to help employees adapt to the new organization and environment.

5.5 Employment matters following the Merger will follow a "business as usual" model and staffing requirements will be kept under ongoing business review, with decisions to be made as appropriate to the circumstances.

5.6 As at 1 December 2004, there was a total of 1,286 permanent staff employed by the ICBC (Asia) Group (with 595 employed by ICBC (Asia) and 691 by BBHK).

## **6. EMPLOYEE CONSULTATION**

6.1 The management and human resources departments of ICBC (Asia) and BBHK have consulted with the employees of both banks to gauge the employees' opinions and feelings about the Merger. The conclusion from such consultations has been that the employees of both banks are generally supportive of the Merger because it will build a bigger bank with a stronger platform. The employees are of the opinion that this will improve ICBC (Asia)'s competitive position and favour expansion, which will in turn provide more opportunities for their career advancement.

## **7. PUBLIC CONSULTATION**

7.1 The Administration is in support of the Bill. The Hong Kong Monetary Authority (the *HKMA*), the Financial Services and the Treasury Bureau, the Department of Justice, the Commissioner of Inland Revenue, the Companies Registrar, the Housing Planning and Lands Bureau, 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 and their comments provided to date, if any, have been accommodated.

## **8. POLICY CONSIDERATIONS**

8.1 It is the Government's stated policy to support consolidation of the banking sector in Hong Kong, which should improve its competitiveness and contribute to systemic stability in the longer term. As part of this policy, the Administration has previously supported bank mergers where reasonable proposals are submitted for consolidation. This is, however, always subject to the overriding aim of promoting the stability of the banking system and providing an appropriate degree of protection to depositors in the merged institutions and to depositors generally.

## **9. LEGISLATIVE TIMETABLE**

9.1 Subject to the obtaining of the President's Ruling and the Chief Executive's consent (if necessary), we aim to publish the Bill in the Gazette and introduce it into the Legislative Council in the second quarter of 2005.

## **10. ENQUIRIES**

10.1 Any enquiries about this brief can be directed to Mr. Andrew Burns at the Office of Legislative Councillor Dr. Hon. David Li Kwok-po, GBS, JP at telephone number 2582 3499 or fax number 2526 1909.

**Dr. Hon. David Li Kwok-po, GBS, JP**  
**10 December 2004**

## APPENDIX A

### Summary of the Key Provisions of the Bill

1. The purpose of the Bill is to transfer the undertakings of BBHK to ICBC (Asia). ICBC (Asia) is an authorised institution regulated by the HKMA and incorporated in Hong Kong. BBHK is an authorised institution regulated by the HKMA, and is a branch office of Belgian Bank, a company incorporated in Belgium.
2. In conjunction with the Merger pursuant to the Bill, BBHK will seek the revocation of its banking licence issued by the HKMA pursuant to the Banking Ordinance. BBHK is not listed on the Stock Exchange of Hong Kong.
3. The Bill provides for the transfer and vesting of the undertakings of BBHK to and in ICBC (Asia) on the appointed day. Except for certain excluded property, all of the business of BBHK on the appointed day will form part of the undertakings transferred to and vested in ICBC (Asia) by the Bill. Certain property (for example, Belgian Companies Code and Belgian Law documents, Companies Ordinance (Cap. 32) documents and the issued share capital) is excluded only for the purpose of complying with the Companies Ordinance (Cap. 32), the Belgian Companies Code (as amended) and the Belgian Law of 17 July 1975, and no discretion is given to ICBC (Asia) or BBHK to exclude any property or liabilities from the undertakings to be transferred and vested.
4. The key provisions of the proposed Bill will be similar to those of other bank merger bills that have been enacted in Hong Kong and are summarised in the following paragraphs.
  - (a) **Clause 3** provides that the board of directors of ICBC (Asia) may determine an appointed day upon which the Merger will take effect and that such appointed day must be notified by both ICBC (Asia) and BBHK in the Gazette.
  - (b) **Clause 4** provides that BBHK's Hong Kong banking licence will be revoked on a day determined by the HKMA and notified in the Gazette. The current intention is that this day will coincide with the appointed day upon which the Merger will take effect.
  - (c) **Clause 5** is the main transfer and vesting provision in the Bill. It provides that the undertakings of BBHK (other than the excluded property) shall transfer to and vest in ICBC (Asia) as if ICBC (Asia) were the same person in law as BBHK upon the appointed day. Where the transfer and vesting of the undertakings is situated outside of Hong Kong and is not governed by Hong Kong law, BBHK shall, if required by ICBC (Asia), take all necessary steps to secure the effective transfer and vesting of the undertakings in ICBC (Asia), and pending such transfer and vesting, BBHK shall hold any such undertakings in trust absolutely for ICBC (Asia).
  - (d) **Clause 6** deals with property that, before the Merger, is held by BBHK in a capacity as a trustee, executor, administrator or in any other fiduciary capacity.

It provides that in such cases, the relevant document should be read as if references to BBHK were references to ICBC (Asia).

- (e) **Clauses 7(a) to (k)** provide that all contracts and agreements made with, given to or by or addressed to BBHK (other than excluded property) shall, after the Merger takes effect, be construed as if ICBC (Asia) had been the original party instead of BBHK and, accordingly, all references to BBHK must be construed as if they were to ICBC (Asia). **Clauses 7(a) to (k)** also provide for accounts, negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgments to be transferred to ICBC (Asia) upon the appointed day. **Clauses 7(g)(v) and (vi)** are provisions that seek to reflect 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. These provisions seek to ensure that ICBC (Asia)'s existing charges and security interests will not be expanded over assets previously held by BBHK of a common customer of ICBC (Asia) and BBHK.
- (f) **Clause 7(1)** provides that the transfer of personal data from BBHK to ICBC (Asia) 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 ICBC (Asia) any power that he could, before the Merger, have exercised in respect of BBHK.
- (g) **Clause 8** provides for the accounting treatment of ICBC (Asia) following the Merger. It provides that the balance sheets and profit and loss accounts of BBHK and ICBC (Asia) for the accounting period of each company in which the appointed day falls shall be prepared in all respects as if the undertakings had vested in ICBC (Asia) on the first day of such accounting period of ICBC (Asia).
- (h) **Clause 9** provides for the taxation arrangements following the Merger. It also provides that only a single profits tax computation shall be prepared by ICBC (Asia) in respect of the profits and losses of BBHK and ICBC (Asia) in respect of the year of assessment for which the transfer of the undertakings takes place. **Clause 9** is intended to have similar effect as 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 10** provides that, in respect of all of BBHK's contracts of employment with those employees who are transferred by the Bill to ICBC (Asia) at the Merger, employment under such contract by BBHK and ICBC (Asia) shall be deemed for all purposes to be a single continuing employment. **Clause 10** also provides that no director, secretary or auditor of BBHK shall, by virtue of the Merger only, automatically become a director, secretary or auditor of ICBC (Asia).
- (j) **Clause 11** ensures that BBHK's employees who are members of BBHK's pension fund schemes shall continue to be members of these schemes after the

transfer of BBHK's undertakings to ICBC (Asia). It also ensures that former employees of BBHK and existing employees of ICBC (Asia) shall continue to enjoy the same rights following the transfer as before under their respective pension schemes and that the transfer by virtue of the Bill shall not automatically bestow any additional entitlements to such employees.

- (k) **Clause 12** prevents the Merger constituting an event of default or a termination event in a contract or agreement to which BBHK or ICBC (Asia) or their respective subsidiaries is a party.
- (l) **Clauses 13 to 15** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against BBHK which, transferred by the Bill, becomes admissible in evidence after the Merger in respect of the same matter for or against ICBC (Asia), including for the purposes of the vesting, custody and control of banker's records under the Evidence Ordinance.
- (m) **Clause 16** deals with the effect of the Merger on interests in land in Hong Kong held by BBHK and provides that the vesting of BBHK's interests in land in ICBC (Asia) pursuant to the Merger does not constitute an acquisition, disposal, assignment, transfer or parting with possession under the Landlord and Tenant (Consolidation) Ordinance. **Clause 16** also provides that the vesting in ICBC (Asia) of BBHK'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 16** exempts either ICBC (Asia) or BBHK from the provisions of the Stamp Duty Ordinance.
- (n) **Clause 17** states that nothing in the Bill shall exempt either BBHK or ICBC (Asia), or any subsidiary of BBHK or ICBC (Asia), from any of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.
- (o) **Clause 18** provides that the Bill does not prevent ICBC (Asia) from amending its memorandum and articles of association or dealing with its property or business generally. **Clause 18** also provides that nothing in the Bill prevents BBHK from altering its memorandum and articles of association or dealing with its property generally before the appointed day.
- (p) **Clause 19** provides that nothing in the Bill once enacted shall affect the rights of the Central Authorities or the Government under the Basic Law and other laws.

## **Appendix B**

### **Draft Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill**



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

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A BILL

To

Provide for the vesting in Industrial and Commercial Bank of China (Asia) Limited of the undertakings of the Hong Kong Branch of Belgian Bank and for other related purposes.

**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
- (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" (華比銀行香港分行) 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)" (中國工商銀行(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" (中國工商銀行(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 deemed 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 undertakings 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 or endorsed 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 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 liabilities to the same extent and in the same manner in all respects as future advances by, or 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 of Belgian Bank, Hong Kong Branch 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 that relate to the undertakings

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 are 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, 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 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 which form part of or otherwise relate to the undertakings 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 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.

#### **Explanatory Memorandum**

The purpose of this Bill is to transfer the undertakings of the Belgian Bank, Hong Kong Branch to Industrial and Commercial Bank of China (Asia) Limited. Industrial and Commercial Bank of China (Asia) Limited and Belgian Bank are banks authorized under the Banking Ordinance (Cap. 155). Industrial and Commercial Bank of China (Asia) Limited is incorporated in Hong Kong and Belgian Bank is incorporated as a limited liability company in Belgium.

2. The Bill provides for the vesting or deemed vesting of the undertakings of the Belgian Bank, Hong Kong Branch in Industrial and Commercial Bank of China (Asia) Limited on the appointed day (clause 5), for the revocation of the Hong Kong banking licence of Belgian Bank (clause 4) and contains a number of supplementary provisions relating, inter alia, to the effect of the vesting in relation to trusts and wills (clause 6), the accounting treatment of Industrial and Commercial Bank of China (Asia) Limited and

Belgian Bank, Hong Kong Branch (clause 8), taxation matters (clause 9), the relationship with customers, borrowers, employees and other third parties (clauses 7, 10, 11 and 12), and evidence (clauses 13 to 15).

FRESHFIELDS BRUCKHAUS DERINGER  
Solicitors for  
Industrial and Commercial Bank of  
China (Asia) Limited  
Belgian Bank