

**President's ruling on
Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill
proposed by Dr Hon David LI Kwok-po, GBS, JP**

I have been requested by Dr Hon David LI to rule whether his proposed Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill, which he intends to introduce into this Council, relates to the restrictions prescribed in Rule 51(3) and (4) of the Council's Rules of Procedure. Before making a ruling on the Bill, I have invited the Secretary for Financial Services and the Treasury ("SFST") to offer his comments and Dr Hon David LI to offer his response. I have also sought the advice of Counsel to the Legislature.

Rule 51(3) and (4) of the Rules of Procedure

2. Rule 51(3) and (4) reads as follows:

"51(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government."

"51(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill."

Purpose of the Bill

3. The Bill provides for the vesting in Industrial and Commercial Bank of China (Asia) Limited ("ICBC (Asia)") of the undertakings of the Hong Kong Branch of Belgian Bank ("BBHK") and for other related purposes. According to the Explanatory Memorandum of the Bill, its purpose is "to transfer the undertakings of the Belgian Bank, Hong Kong Branch to Industrial and Commercial Bank of China (Asia) Limited". If the Bill is enacted, on a day to be appointed by the Monetary Authority, the banking licence of Belgian Bank shall be revoked.

The Administration's views

4. SFST is of the view that the Bill relates to Government's policies on bank merger, taxation, and control of tenancies:

(a) Bank merger

SFST advises that it is the Government's 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 endeavours to promote and facilitate bank mergers where reasonable proposals are submitted for consolidation. This is, however, always subject to the overriding aim to promote the stability of the banking system and to provide an appropriate degree of protection to depositors in the merged institutions and to depositors in the merged institutions and to depositors generally.

The Administration considers that the proposed merger will help promote stability of the banking sector.

(b) Taxation

SFST points out that Clause 9(1) of the Bill provides that for the purpose of the Inland Revenue Ordinance (IRO), ICBC (Asia) shall be treated as the continuation of and the same person in law with regard to the undertakings as BBHK. Clause 9(2)(b) allows the accumulated losses of BBHK, if any, to be set off against the profits of ICBC (Asia). This has the effect of overriding the provision in section 19C(4) of the IRO.

Section 19C(4) of the IRO provides that where a corporation in any year of assessment sustains a loss in that trade, the amount of that loss shall be set off against the assessable profits of the same corporation for that year of assessment, and to the extent not so set off, shall be carried forward and set off against the same corporation's assessable profits for subsequent years of assessment. This provision enables a corporation (as opposed to a group of associated companies) to set off its loss (either current or brought forward) against its own assessable profits; and that when a corporation is liquidated or ceases to exist upon merger, the loss it incurred would lapse.

On the issue of set-off of losses against profits of corporations, the legal position is that section 19C(4) of IRO should apply unless it is specifically overridden by another law enacted by the Legislative Council and signed by the Chief Executive. The Bill, with provisions having the effect of allowing set off of losses and profits between associated companies, relates to the Government policy. Therefore, if the Bill is enacted, the Government would implement the provisions in the enacted Ordinance, including allowing ICBC (Asia), for tax assessment

purposes, to carry forward any losses accumulated by the BBHK.

(c) Control of tenancies

Under Clause 16(1)(a) and (b) of the Bill, the vesting and deemed vesting in ICBC (Asia) of an interest in land by virtue of the enacted Ordinance shall not constitute:

- (i) 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) (LTO); or
- (ii) an assignment or underlease of, or an agreement to assign or underlet, that interest for the purposes of section 6(1)(b) of LTO.

SFST considers that these provisions of the Bill, if enacted, will have the effect of amending the application of those sections of LTO referred to therein; the latter may otherwise apply but for the enactment of these provisions. Hence, they relate to government policy as reflected in the above-mentioned sections of LTO.

Response from Dr Hon David LI

5. Dr Hon David LI has informed me that he has no comments on the Administration's view.

Advice of Counsel to the Legislature

6. Counsel to the Legislature advises that the Bill relates to Government policies for reason that the Bill would have substantive effect on Government's policies on bank merger, taxation and control of tenancies.

My opinion

7. Having considered the advice of Counsel to the Legislature in the light of SFST's views on the Bill, and having regard to Dr Hon David LI's advice that he has no comments on the Administration's views, I consider that the Bill relates to Government's policies on the regulation of banks, taxation, and the control of tenancies, as reflected in the relevant legislation.

Ruling

8. I rule that the Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure and requires the written consent of the Chief Executive for its introduction.

(Mrs Rita FAN)
President
Legislative Council

26 April 2005