立法會
Legislative Council

<u>LC Paper No. LS 114/00-01</u>

Paper for the House Committee Meeting of the Legislative Council on 15 June 2001

Legal Service Division Report on The Bank of East Asia, Limited Bill

(Private Member's Bill)

Objects of the Bill

To provide for the vesting in The Bank of East Asia, Limited ("BEA") of the undertaking of United Chinese Bank Limited ("UCB") and for other related purposes.

LegCo Brief Reference

2. No LegCo Brief has been issued.

Date of First Reading

3. 13 June 2001.

Comments

<u>Private Member's Bill</u>

4. This is a private bill presented by the Hon NG Leung-sing. According to the Preamble of the Bill, UCB is a wholly owned subsidiary of BEA. For the better conduct of the businesses of both banks, it is expedient that their respective undertakings be merged and that such merger should occur by means of a transfer of the undertaking of UCB to BEA. And in view of the extent of the contractual and other legal relationships affecting the conduct of the undertaking of UCB, it is expedient that such undertaking be transferred by the Bill without interference with the conduct and continuity of the businesses of both banks.

5. The President has ruled that the Bill relates to Government policy within the meaning of Rule 51(4) of the Rules of Procedure and requires the written consent of the Chief Executive for its introduction. The policies that the Bill relates to are the regulation of banks, the set-off of losses against profits of corporations and the control of tenancies as reflected in the relevant legislation. By letter dated 26 May 2001, the Chief Executive gave consent for the Bill to be introduced into the Council. In accordance with Rule 54(1) of the Rules of Procedure, such written consent was signified by the Secretary for Financial Services before the Council entered upon consideration of the second reading of the Bill on 13 June 2001.

Monetary Authority's support of the proposed merger

6. The Administration has advised that the Monetary Authority considers that the proposed merger should help promote cost-effectiveness and enhance internal controls of the banks concerned. The Authority is also satisfied that the proposed merger would not adversely affect the interest of the merging banks' depositors. A copy of the Administration's letter dated 12 June 2001 is at the **Annex**.

Appointed day

7. The vesting of undertaking would take effect on the appointed day. Under Clause 3 of the Bill, UCB and BEA shall give joint notice in the Gazette of the appointed day, and such notice is not subsidiary legislation. On the appointed day, without further act or deed, BEA would succeed to the whole undertaking of UCB as if in all respects BEA were the same person in law as UCB. All existing instruments entered into by UCB including documents granting or comprising any security interest shall be construed and have effect on and from the appointed day as if BEA had been a party thereto instead of UCB.

Status of UCB on or after the appointed day

8. On the appointed day, the name of UCB would be changed to "UCB Limited" and the authorized and issued share capital would be reduced and cancelled. The banking licence of UCB would be revoked in accordance with Part V of the Banking Ordinance (Cap. 155) on a day to be decided by the Monetary Authority and published in the Gazette. According to Allen & Overy, solicitors for BEA and UCB, ("the Solicitors"), the Monetary Authority has indicated that the licence would be revoked on the same day as the appointed day, and UCB and BEA would publish a joint notice of the date of revocation in the Gazette.

9. The Solicitors have also confirmed :

(a) that the Monetary Authority gave its approval under section 69 of the Banking Ordinance for UCB to make an arrangement or enter into an agreement for the sale or disposal of all of its banking business.

(b) that BEA and UCB will apply for the approval of the Monetary Authority under section 44 of the Banking Ordinance for establishing or maintaining local branches.

10. The remaining parts of the Bill are supplementary provisions that are similar to existing provisions in other ordinances concerning merger of banks enacted prior to 1997. The main exceptions are highlighted in paragraphs 11 to 13 below.

Personal Data (Privacy)Ordinance

11. Clause 7(l) of the Bill is an unprecedented provision since there are no ordinances for merger of banks enacted after the commencement of the Personal Data (Privacy) Ordinance (Cap. 486). Under that sub-clause, the transfer to and vesting in BEA of the undertaking of UCB, and any disclosure to BEA of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which UCB is subject immediately before the appointed day or to a contravention by BEA or UCB of the Personal Data (Privacy) Ordinance or the data protection principles.

12. The effect of this sub-clause is :

(a) to overcome the difficulty of breaching the common law duty of confidentiality that exists between a banker and its customers;

(b) to deal with the possible contravention of the requirements under the Personal Data (Privacy) Ordinance;

(b) to preclude the need for BEA and UCB to obtain prescribed consent from the data subjects under data protection principle 3 of the Personal Data (Privacy) Ordinance.

Remuneration or scale fees

13. Under Clause 6(2) and (3) of the Bill, a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, UCB in any existing instrument, order of the court or will under which it holds any property in a fiduciary capacity or acts as an executor would not be construed and have effect as if, there were substituted a reference to the terms and conditions of or to a scale of fees of BEA. The intention is that BEA would only be permitted to charge fees in accordance with UCB's standard scale of fees, subject to variation in accordance with the terms of the relevant instrument and order. Similarly, under Clause 7(c), any account between UCB and a customer shall, on the appointed day be transferred to BEA subject to the same conditions and incidents provided that nothing shall affect the right of BEA or the customer to vary those conditions or incidents.

Contracts of employment and benefits

14. Clause 9 of the Bill deems for all purposes employment with UCB and BEA under a contract for the employment of any person by UCB to be a single continuing employment, with the exception of the directors and auditor of UCB. In this regard, an application will be made to the Monetary Authority for its consent under section 73 of the Banking Ordinance. Clause 10 relates to pension funds, provident funds and gratuity benefits payable by UCB and BEA.

Taxation

15. Clause 8 of the Bill relates to the accounting treatment of UCB and BEA. Any profits or losses of UCB shall be treated for all purposes as profits or losses of the BEA from the beginning of the financial year of the merger. For Members' information, BEA's accountant, KPMG, has advised that based on the projected and audited financial forecasts and the related tax computations of both banks, neither BEA nor UCB will sustain a loss for profits tax purposes for the eight month period ending on 26 August 2001.

Savings clauses

16. Clause 16 of the Bill provides that nothing in the Bill shall exempt UCB or BEA or their subsidiaries from the provisions of any enactment regulating the carrying on of the business of any of them. This means that the passage of the Bill would not exempt BEA or UCB from obtaining the necessary approvals or consent from the Monetary Authority under the Banking Ordinance.

17. Clause 18 of the Bill follows substantially saving provisions in Private Members' Bills enacted since 1997. It provides that nothing in the Bill 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 the Bill and those claiming by, from or under them.

Payment of stamp duty

18. The Solicitors have confirmed that an authentic copy of the Bill enacted as an Ordinance would be stamped with the stamp duty chargeable on the transfer and vesting of immovable properties and Hong Kong stocks in accordance with section 4(8) of the Stamp Duty Ordinance (Cap. 117). Since UCB is a wholly owned subsidiary of BEA, the banks would apply for the stamp duty relief for transfer from one associated body corporate to another under section 45 of that Ordinance.

Public Consultation

19. No public consultation has been carried out.

Consultation with the LegCo Panel

20. No consultation with any LegCo Panel has been carried out.

Conclusion

21. Subject to Members' views, the legal and drafting aspects of the Bill are in order.

Encl

Prepared by

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13 June 2001

Bill/B/52/00-01

Annex

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12 June 2001

By Fax: 2877 5029
Ms Bernice Wong
Assistant Legal Adviser
Legislative Council Secretariat
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8 Jackson Road
Central
Hong Kong

Dear Ms Wong,

Bank of China (Hong Kong) Limited (Merger) Bill
The Bank of East Asia, Limited Bill

The Hong Kong Monetary Authority (HKMA) considers that the proposed mergers under the Bank of China (Hong Kong) Limited (Merger) Bill and The Bank of East Asia, Limited Bill should help promote cost-effectiveness and enhance internal controls of the banks concerned. The surviving banks' competitiveness should be enhanced. These will contribute to the stability of the banking sector.

As a bank incorporated in Hong Kong, Po Sang Bank Limited will come under the HKMA's consolidated supervision after the merger. Compared with the current situation where eight out the ten merging banks are incorporated in the Mainland and thus not subject to HKMA's consolidated supervision, HKMA's supervision of the Bank of China Group's operation in Hong Kong will become more effective after the merger.

The HKMA is also satisfied that the proposed mergers under the two Bills will not adversely affect the interest of the merging banks' depositors.

Yours sincerely,

(Stanley Wong)
for Secretary for Financial Services

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