

立法會 *Legislative Council*

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Paper for the House Committee Meeting of the Legislative Council on 7 December 2001

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

(Private Member's Bill)

Object of the Bill

To provide for the vesting in The Bank of East Asia, Limited ("BEA") of the undertaking of First Pacific Bank Limited ("FPB") and for other related purposes.

LegCo Brief Reference

2. A LegCo Brief has been issued on 30 November 2001.

Date of First Reading

3. 5 December 2001.

Comments

Private Member's Bill

4. This is a private bill presented by the Hon NG Leung-sing, JP. According to the LegCo Brief, FPB is a wholly owned subsidiary of BEA. Both banks are licensed under the Banking Ordinance (Cap. 155) and are incorporated in Hong Kong. It is stated in the Preamble of the Bill that 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 FPB to BEA. And in view of the extent of the contractual and other legal relationships affecting the conduct of the undertaking of FPB, 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 21 November 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 5 December 2001.

Monetary Authority's support of the proposed merger

6. At the meeting of the LegCo Panel on Financial Affairs on 5 November 2001 ("the Panel meeting"), the Administration welcomed the introduction of the Bill and advised that the Monetary Authority considered that the proposed merger would help promote stability of the banking sector. The representative of BEA also informed Panel Members that the Monetary Authority has given its approval under section 69 of the Banking Ordinance for FPB to make an arrangement or enter into an agreement for the sale or disposal of all of its banking business.

Appointed day

7. The vesting of undertaking would take effect on the appointed day. Under Clause 3 of the Bill, FPB 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 FPB as if in all respects BEA were the same person in law as FPB. All existing instruments entered into by FPB 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 FPB.

8. On the appointed day, the name of FPB would be changed to "BEA Pacific Limited" and the authorized and issued share capital would be reduced and cancelled. The banking licence of FPB would be revoked in accordance with Part V of the Banking Ordinance on a day to be decided by the Monetary Authority and published in the Gazette.

Security interest

9. The remaining parts of the Bill are supplementary provisions that are similar to existing provisions in Bank of China (Hong Kong) Limited (Merger) Ordinance (25 of 2001) and The Bank of East Asia, Limited Ordinance (26 of 2001), both enacted in July 2001. In particular, Clause 7(g)(v) and (vi) follows closely the relevant provisions in the two said Ordinances to ensure that the liability of persons

providing security interest to BEA or FPB would not be increased or expanded by virtue of the Bill unless —

- (a) the terms of such security interest expressly provide otherwise;
- (b) BEA obtains the written consent of the persons who granted such security interest; or
- (c) such security interest arises at general law.

Personal Data (Privacy) Ordinance

10. Under Clause 7(l), it is proposed that the transfer to and vesting in BEA of the undertaking of FPB, 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 FPB is subject immediately before the appointed day or to a contravention by BEA or FPB of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) or the data protection principles. At the Panel meeting, the Administration agreed in principle that legislative amendments should be made to introduce exemption provisions to the PDPO regarding the transfer of personal data in acquisition or merger activities, but it would be unlikely that PDPO be amended in time.

Taxation

11. Clause 8 of the Bill relates to the accounting treatment of FPB and BEA. Any profits or losses of FPB shall be treated for all purposes as profits or losses of the BEA from the beginning of the financial year of the merger. At the Panel meeting, BEA's representative disclosed that neither BEA nor FPB had suffered loss for the year of assessment in question, and either bank's responsibility for tax payment would not be decreased by virtue of the merger.

Contracts of employment and benefits

12. Clause 9 of the Bill deems for all purposes employment with FPB and BEA under a contract for the employment of any person by FPB to be a single continuing employment, with the exception of the directors, secretary and auditor of FPB. Clause 10 relates to the AIA Retirement Fund Scheme, the BEA (MPF) Master Trust Scheme and the gratuity benefits payable by FPB and BEA. At the Panel meeting, Members were advised that BEA did not have plans to lay off staff after the proposed merger took effect.

Savings clauses

13. Clause 16 of the Bill provides that nothing in the Bill shall exempt FPB 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 FPB from obtaining the necessary approvals or consent from the Monetary Authority under the Banking Ordinance.

14. Clause 18 of the Bill follows the requirement under Rule 50(8) of the Rules of Procedure. 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.

Public Consultation

15. No public consultation has been carried out. According to paragraph 25 of the LegCo Brief, various Government departments and statutory bodies have reviewed and commented on the Bill.

Consultation with the LegCo Panel

16. Members of the LegCo Panel on Financial Affairs have been briefed on the Bill at the meeting on 5 November 2001. Relevant information given at the briefing are set out in paragraphs 6, 10, 11 and 12 above.

Conclusion

17. The Bill is legally in order. Subject to Members' views, the Bill is ready for resumption of the Second Reading debate.

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