

**LEGISLATIVE COUNCIL BRIEF**  
**The Bank of East Asia, Limited (Merger of Subsidiaries) Bill**

**INTRODUCTION**

1. The Chief Executive granted his consent for the Bill to be introduced before the Legislative Council on 20 February 2003. This Bill is introduced under Article 74 of the Basic Law by Legislative Council member, the Honourable Mr. Ng Leung Sing. The Bill was considered by the Financial Affairs Panel of the Legislative Council on 16 December 2002 and no objections to the Bill were raised.

**BACKGROUND AND ARGUMENT**

2. The Bill provides for the merger of East Asia Credit Company Limited ("**EACredit**") and East Asia Finance Company, Limited ("**EAFinance**") with The Bank of East Asia, Limited ("**Bank of East Asia**"). Both EACredit and EAFinance are wholly owned subsidiaries of Bank of East Asia.

3. In a number of jurisdictions, such as the United States, Japan and Switzerland, financial institutions 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 mergers of financial institutions 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 which transfers all property and liabilities of the merging entities which are governed by Hong Kong law. Given the large number of outstanding agreements between EACredit and/or EAFinance and their respective customers, it is not practical to transfer such property and liabilities by way of novation and assignment to Bank of East Asia.

4. It is the Government's stated policy to support consolidation of the banking and financial 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 mergers of financial institutions 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 merging institutions and to depositors generally. The Hong Kong Monetary Authority has no objection to the proposed merger being effected by way of a private bill such as the Bill.

5. The Bill has advantages for customers, other financial institutions and suppliers who conduct business with EACredit and EAFinance. They will have the reassurance that all Hong Kong law governed property and liabilities of EACredit and EAFinance have been properly transferred to Bank of East Asia. Customers of EACredit and EAFinance will also not be inconvenienced by having to sign new documentation. Further, the basis of the transfer of the Hong Kong law governed property and liabilities between EACredit, EAFinance and Bank of East Asia will be publicly known and uniform. In addition, following the merger, the consolidated banking group should be financially stronger, contributing to the stability of the banking and financial sector in Hong Kong.

6. The Bill also has advantages for the shareholders of Bank of East Asia. The businesses of its subsidiaries, EACredit and EAFinance, will be combined into the business of their parent, Bank of East Asia, therefore facilitating economies of scale. In the interests of the customers of EACredit and EAFinance, each of EACredit and EAFinance will be required, as a precondition to the revocation of EACredit's registration as deposit-taking company and the restricted banking licence of EAFinance under the Banking Ordinance, to satisfy the Hong Kong Monetary Authority that all non-Hong Kong law governed property and liabilities (not otherwise transferred by the Bill) are adequately and satisfactorily transferred on a case-by-case basis to Bank of East Asia. Assuming the Hong Kong Monetary Authority is satisfied of the foregoing, the merger will proceed. It is proposed that the appointed day of the merger occurs no later than the end of May 2003. Bank of East Asia will agree the appointed day with the Hong Kong Monetary Authority and this will, subject to the Hong Kong Monetary Authority's discretion, be concurrent with the revocation of EACredit's registration as a deposit-taking company and the restricted banking licence of EAFinance.

7. Since the early 1980s the Legislative Council has passed sixteen ordinances implementing mergers of banks and other financial institutions. The Bill

is based on the form of the five most recent ordinances for the merger of financial institutions enacted by the Legislative Council over the past two years.

## **THE BILL**

8. The purpose of the Bill is to transfer the undertakings of EACredit and EAFinance to Bank of East Asia. EACredit, EAFinance and Bank of East Asia are all incorporated in Hong Kong and are authorised institutions under the Banking Ordinance: EACredit is registered as a deposit-taking company, EAFinance holds a restricted banking licence and Bank of East Asia holds a banking licence. At the merger, the registration of EACredit as a deposit-taking company and the restricted banking licence of EAFinance will be revoked.

9. The Bill provides for the vesting of the undertakings of EACredit and EAFinance in Bank of East Asia on the appointed day. The key provisions of the Bill are summarised in the following paragraphs.

10. **Clause 3** provides that the board of directors of Bank of East Asia may determine an appointed day upon which the merger will take effect and that such appointed day must be notified jointly by EACredit, EAFinance and Bank of East Asia in the Gazette.

11. **Clause 4** provides that, on the appointed day, the name of EACredit be changed to "BEAC Limited" and the name of EAFinance be changed to "BEAF Limited", and their respective authorised and issued share capital be reduced. Clause 4 also provides that the registration of EACredit as a deposit-taking company and the restricted banking licence of EAFinance shall be revoked on a day to be appointed by the Hong Kong Monetary Authority and notified in the Gazette.

12. **Clause 5** is the main transfer and vesting provision in the Bill. It provides that the undertakings of EACredit and EAFinance shall transfer to and vest in Bank of East Asia as if Bank of East Asia were the same person in law as EACredit or EAFinance, as the case may be, upon the appointed day.

13. **Clause 6** deals with property which, before the merger, is held by either EACredit or EAFinance in a capacity as a trustee. It provides that in such case, the relevant document should be read as if references to EACredit or EAFinance were references to Bank of East Asia.

14. **Clause 7(a) to (k)** provides that all contracts and agreements entered into by, made with, given to or by or addressed to EACredit or EAFinance shall, after the merger takes effect, be construed as if Bank of East Asia had been the original party instead of EACredit or EAFinance, as the case may be, and, accordingly, all references to EACredit or EAFinance must be construed as if they were to Bank of East Asia. **Clause 7(a) to (k)** also provides for accounts, negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgements to be transferred to Bank of East Asia upon the appointed day. **Clauses 7(g)(v) and (vi)** are provisions which seek to reflect previous concerns in respect of other bank mergers (raised by the Hon. Mr Albert Ho Chun-yan) regarding the possible increase of security or charges over customers' assets as a result of the merger. These provisions seek to ensure that Bank of East Asia's existing charges and security interests will not be expanded over assets previously held by EACredit or EAFinance of a common EACredit / EAFinance / Bank of East Asia customer.

15. **Clause 7(l)** deals with data privacy issues under the Personal Data (Privacy) Ordinance. It provides that the Privacy Commissioner could exercise in respect of Bank of East Asia any power which he may, before the merger, have exercised in respect of EACredit or EAFinance. It also clarifies that the transfer of personal data from EACredit or EAFinance to Bank of East Asia under the Bill shall not result in a breach of any duty of confidentiality to which EACredit or EAFinance (as the case may be) is subject or a contravention of the Personal Data (Privacy) Ordinance.

16. **Clause 8** provides for the accounting treatment of Bank of East Asia, EACredit and EAFinance following the transfer of the undertakings of EACredit and EAFinance to Bank of East Asia. It provides that the balance sheets and profit and loss accounts of EACredit, EAFinance and Bank of East 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 Bank of East Asia on the first day of such accounting period of Bank of East Asia.

17. **Clause 9** provides that no director, secretary or auditor of EACredit or EAFinance shall, by virtue of the Bill only, automatically become a director, secretary or auditor, as the case may be, of Bank of East Asia.

18. **Clause 10** prevents the merger of EACredit and EAFinance with Bank of East Asia constituting an event of default or a termination event in a contract or agreement to which any of Bank of East Asia or its subsidiaries or EACredit or EAFinance is a party.

19. **Clauses 11 to 13** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against EACredit or EAFinance which, transferred by the Bill, becomes admissible in evidence after the merger in respect of the same matter for or against Bank of East Asia, including for the purposes of the vesting, custody and control of banker's records under the Evidence Ordinance.

20. **Clause 14** deals with the effect of the merger on interests in land in Hong Kong held by EACredit or EAFinance and provides that the vesting of EACredit's or EAFinance's interests in land in Bank of East Asia pursuant to the merger does not constitute an acquisition, assignment, transfer or parting with possession under the Landlord and Tenant (Consolidation) Ordinance. **Clause 14** also provides that the vesting in Bank of East Asia of EACredit's or EAFinance'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 states that nothing in **Clause 14** exempts EACredit, EAFinance or Bank of East Asia from the provisions of the Stamp Duty Ordinance.

21. **Clause 15** states that nothing in the Bill shall exempt EACredit, EAFinance or Bank of East Asia or any subsidiary of the Bank of East Asia from any

of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.

22. **Clause 16** provides that the Bill does not prevent Bank of East Asia from amending its memorandum and articles of association or dealing with its property or business generally. **Clause 16** also provides that nothing in the Bill prevents EACredit or EAFinance from altering its memorandum and articles of association or dealing with its property generally before the appointed day.

23. **Clause 17** 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.

## **LEGISLATIVE TIMETABLE**

24. The proposed legislative timetable is as follows:-

Financial Affairs Panel	16 December 2002
Publication in the Gazette for the first time	14 February 2003
Publication in the Gazette for the second time	21 February 2003
Member in charge of the Bill gives notice of intention to present the Bill to the Clerk of the Legislative Council	24 February 2003
First Reading and commencement of Second Reading debate	12 March 2003
House Committee	21 March 2003
Resumption of second Reading, Committee Stage and Third Reading	9 April 2003

## **ECONOMIC IMPLICATIONS**

25. The Bill facilitates the merger of EACredit and EAFinance with Bank of East Asia, which wholly owns EACredit and EAFinance. The consolidation of the banking and financial sector in Hong Kong, such as that facilitated by the Bill, should improve its competitiveness and contribute to systemic stability in the longer term to the advantage of Hong Kong's economy.

## **PUBLIC CONSULTATION**

26. The Bill effects the merger of EACredit and EAFinance with Bank of East Asia, which wholly owns EACredit and EAFinance. No public consultation has been conducted. However, the Financial Affairs Panel have considered the Bill and each of the Hong Kong Monetary Authority, Financial Services and the Treasury Bureau, Department of Justice, Inland Revenue Department, Companies Registry, Land Registry, Securities and Futures Commission and Office of the Privacy Commissioner for Personal Data have reviewed and commented upon the Bill.

## **PUBLICITY**

27. The Bill was published in the Gazette on 14 and 21 February 2003 and notice of the Bill has been given by way of advertisement in the South China Morning Post and the Hong Kong Economic Times on 14 and 21 February 2003.

## **ENQUIRY**

28. Enquiries on this Brief may be directed to the Honourable Mr. Ng Leung Sing at 2537 2536.

24 February 2003