

立法會
Legislative Council

LC Paper No. LS60/02-03

**Paper for the House Committee Meeting
on 28 February 2003**

**Legal Service Division Report on Dao Heng Bank Limited (Merger) Bill
(Private Member's Bill)**

I. SUMMARY

1. **Object of the Bill** To provide for the vesting in Dao Heng Bank Limited of the undertakings of DBS Kwong On Bank Limited and Overseas Trust Bank, Limited and for other related purposes.

2. **Comments**
 - (a) This is a member's bill introduced by Dr Hon David LI Kwok-po, GBS, JP with the consent of the Chief Executive.

 - (b) A Committee Stage amendment would be introduced to amend the proposed new names of DBS Kwong On Bank Limited and Overseas Trust Bank, Limited in Clause 4(1)(a) of the Bill. The Committee Stage amendment is legally in order and the Administration has no comment.

 - (c) The Bill is similar to recently enacted bank merger ordinances in substance.

3. **Public Consultation** No public consultation has been carried out.

4. **Consultation with LegCo Panel** The Bill was discussed at the meeting of the Panel on Financial Affairs on 4 November 2002.

5. **Conclusion** With the Committee Stage amendment, the Bill is legally in order. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

II. REPORT

Object of the Bill

To provide for the vesting in Dao Heng Bank Limited ("Dao Heng Bank") of the undertakings of DBS Kwong On Bank Limited ("DKOB") and Overseas Trust Bank, Limited ("OTB") and for other related purposes.

LegCo Brief Reference

2. LegCo Brief dated 7 February 2003 issued by Dr Hon David LI Kwok-po, GBS, JP.

Date of First Reading

3. 26 February 2003.

Comments

Private Member's Bill

4. This is a private bill presented by Dr Hon David LI Kwok-po, GBS, JP. According to the LegCo Brief, Dao Heng Bank, DKOB and OTB are members of the DBS Group headed by The Development Bank of Singapore Limited. All three banks are licensed under the Banking Ordinance (Cap. 155) and are incorporated in Hong Kong.

5. It is stated in the Preamble of the Bill that for the better conduct of the businesses of the DBS Group, it is expedient that the respective undertakings of the three banks be merged and that such merger should occur by means of a transfer of the undertakings of DKOB and OTB (collectively "the Transferring Banks") to Dao Heng Bank. It is also stated in the Preamble that in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of the Transferring Banks, it is expedient that such undertakings be transferred by the Bill without interference with the conduct and continuity of the businesses of the three banks.

6. 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 a letter dated 24 January 2003, the Administration confirmed that the Chief Executive has given

consent for the Bill to be introduced into the Legislative Council. In accordance with Rule 54(1) of the Rules of Procedure, such written consent was signified by the Secretary for Financial Services and the Treasury before the second reading of the Bill on 26 February 2003.

Appointed day

7. The vesting of undertaking would take effect on the appointed day. Under Clause 3 of the Bill, Dao Heng Bank and the Transferring Banks 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, Dao Heng Bank would succeed to the whole undertakings of the Transferring Banks as if in all respects Dao Heng Bank were the same person in law as DKOB or OTB.

8. On the appointed day, the name of the Transferring Banks would be changed and their authorized and issued share capital would be reduced and cancelled. The banking licences of the Transferring Banks 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. It has been the Government's policy for the banking licences to be revoked on the appointed day.

Committee Stage amendment

9. Freshfields Bruckhaus Deringer, solicitors for the three banks ("the drafting solicitors"), have indicated that a Committee Stage amendment as set out in the **Annex** would be introduced to Clause 4(1)(a) of the Bill. Under the existing clause 4(1)(a), on the appointed day, the names of DKOB and OTB would be respectively changed to "DBS Kwong On Limited (廣安有限公司)" and "Overseas Trust Limited (海外信託有限公司)". The Committee Stage amendment, if passed, would mean that the names be amended to "DBS Kwong On Limited (新加坡發展廣安有限公司)" and "DBS Overseas Limited (新加坡發展海外有限公司)" respectively. The reasons for the proposed amendments are :

- (a) Initially, the new Chinese name of DBS Kwong On Bank Limited in the draft Bill was "DBS 廣安有限公司". The law draftsman deleted the letters "DBS" from the Chinese name to comply with the policy of the Companies Registry implemented since July 2002 that a company name is not permitted to have a combination of English letters and Chinese characters. The drafting solicitors have recently discovered that the Chinese name "廣安有限公司" is already in use. Under section 20(1)(a) of the Companies Ordinance (Cap. 32), a company shall not be registered by a name which is the same as a name appearing in the Registrar's index of company names.

- (b) As regards the new name for OTB, the Companies Registrar has recently informed the drafting solicitors that consent for the use of the words "Trust" and "信託" would not be granted because it will not be operating as a trust company after the appointed day. Under section 20(2)(b) of the Companies Ordinance, consent of the Chief Executive is required for a name which includes any word or expression specified by order under section 22B of that Ordinance, "trust" being one of those specified words.

The drafting and legal aspects of the Committee Stage amendment are in order and the Administration has stated that it has no comment.

Comparison with recently enacted bank merger ordinances

10. The Bill follows recently enacted bank merger ordinances in the following respects:

- (a) the definition of "excluded property" is to facilitate compliance with the Companies Ordinance and no discretion is given to Dao Heng Bank or the Transferring Banks to exclude any property or liabilities from the vesting of undertakings;
- (b) the Bill proposes that Dao Heng Bank would be treated as if it were the continuation of and the same person in law with regard to the undertakings as the Transferring Banks. According to the LegCo Brief, neither of the Transferring Banks carries any accumulated losses for tax assessment purposes;
- (c) the Bill seeks to deem for all purposes employment with the Transferring Banks and Dao Heng Bank under a contract for the employment of any person by Dao Heng Bank to be a single continuing employment;
- (d) there are provisions in the Bill that ensure the liability of persons providing security interest to the Transferring banks would not be increased or expanded by virtue of the Bill unless otherwise excepted;
- (e) the Bill provides that the transfer to Dao Heng Bank of the undertakings of the Transferring Banks and any disclosure to Dao Heng Bank of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality, a contravention of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

Public Consultation

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

Consultation with LegCo Panel

12. The policy aspects of the Bill were discussed at the meeting of the Panel on Financial Affairs on 4 November 2002. In particular, members of the Panel noted :

- (a) the staff level had been stabilized and significant lay-off was not anticipated in the foreseeable future. The expansion programme of the DBS Group into the Mainland would create new jobs and provide development opportunities to staff ;
- (b) the merger would create economies of scale, enhance efficiencies, achieve cost savings and provide better and more cost-effective services to customers;
- (c) interests of existing customers would be protected. Due diligence would be carried out by the drafting solicitors to ensure that the merger would not constitute a breach of contract or an event of default in any contract or other document to which any of the banks is a party.

Members may refer to minutes of the meeting (LC Paper No. CB(1) 590/02-03) for details.

Conclusion

13. With the Committee Stage amendment, the Bill is legally in order. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

Encl

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DAO HENG BANK LIMITED (MERGER) BILL

COMMITTEE STAGE

Amendments to be moved by Dr. the Honourable David Li Kwok-po, GBS, JP

Clause

Amendment Proposed

- 4 In subclause (1)(a), by deleting everything after “changed to” and substituting ““DBS Kwong On Limited (新加坡發展廣安有限公司)” and “DBS Overseas Limited (新加坡發展海外有限公司)””.