

立法會  
*Legislative Council*

LC Paper No. LS74/02-03

**Paper for the House Committee Meeting  
on 21 March 2003**

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

**(Private Member's Bill)**

**I. SUMMARY**

- 1. Object of the Bill**                      To provide for the vesting in The Bank of East Asia, Limited of the undertakings of East Asia Credit Company Limited and East Asia Finance Company, Limited and for other related purposes.
- 2. Comments**

  - (a) This is a member's bill introduced by Hon Ng Leung-sing, JP with the consent of the Chief Executive.
  - (b) The Bill is similar to recently enacted bank merger ordinances in substance.
  - (c) There is no provision in the Bill relating to employment contracts and retirement benefits because the existing staff of East Asia Credit Company Limited and East Asia Finance Company, Limited are employed by The Bank of East Asia, Limited.
- 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 16 December 2002.
- 5. Conclusion**                              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 The Bank of East Asia, Limited ("Bank of East Asia") of the undertakings of East Asia Credit Company Limited ("EACredit") and East Asia Finance Company, Limited ("EAFinance") and for other related purposes.

### **LegCo Brief Reference**

2. LegCo Brief dated 24 February 2003 issued by Hon Ng Leung-sing, JP.

### **Date of First Reading**

3. 12 March 2003.

### **Comments**

#### ***Private Member's Bill***

4. This is a private bill presented by Hon Ng Leung-sing, JP. According to the Bill, EACredit and EAFinance are wholly owned subsidiaries of Bank of East Asia. All three companies are incorporated in Hong Kong. Bank of East Asia and EAFinance are respectively a bank and a restricted licence bank licensed under the Banking Ordinance (Cap. 155), while EACredit is a deposit-taking company registered under that Ordinance.

5. It is stated in the Preamble of the Bill that for the better conduct of the businesses of the three companies, it is expedient that their respective undertakings be merged and that such merger should occur by means of a transfer of the undertakings of EACredit and EAFinance (collectively "the Transferring Companies") to Bank of East Asia. 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 Companies, it is expedient that such undertakings be transferred by the Bill without interference with the conduct and continuity of the businesses of the three companies.

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 authorized institutions, the set-off of losses against profits of

corporations and the control of tenancies as reflected in the relevant legislation. By a letter dated 20 February 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 12 March 2003.

*The Administration's support of the proposed merger*

7. At the meeting of the Panel on Financial Affairs on 16 December 2002 ("the Panel meeting"), the Administration told members that it was the Government's stated policy to support consolidation of the banking sector in Hong Kong subject to the overriding aim to promote the stability of the banking system and to provide an appropriate degree of protection to the interests of customers and depositors. The proposed merger had the support of the Government.

*Appointed day*

8. The vesting of undertaking would take effect on the appointed day. Under Clause 3 of the Bill, Bank of East Asia and the Transferring Companies 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, Bank of East Asia would succeed to the whole undertakings of the Transferring Companies as if in all respects Bank of East Asia were the same person in law as EACredit or EAFinance.

9. On the appointed day, the name of EACredit would be changed to "BEAC Limited" and EAFinance to "BEAF Limited". Their authorized and issued share capital would be reduced and cancelled. The registration of EACredit as a deposit-taking company and the restricted banking licence of EAFinance 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.

*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 Bank of East Asia or the Transferring Companies to exclude any property or liabilities from the vesting of undertakings;
- (b) the Bill proposes that Bank of East Asia would be treated as if it were the continuation of and the same person in law with regard to the undertakings as the Transferring Companies. At the Panel meeting,

the representative of Bank of East Asia confirmed that neither of the Transferring Companies nor Bank of East Asia carry any accumulated losses for tax assessment purposes;

- (c) there are provisions in the Bill that ensure the liability of persons providing security interest to the Transferring Companies would not be increased or expanded by virtue of the Bill unless otherwise excepted;
- (d) the Bill provides that the transfer to Bank of East Asia of the undertakings of the Transferring Companies and any disclosure to Bank of East Asia 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 16 December 2002. In addition to the relevant information set out in paragraphs 7 and 10(b), members of the Panel noted :

- (a) employment contracts of all existing staff of EACredit and EAFinance were signed with Bank of East Asia. Hence, there was no need to provide for the transfer of employment contracts and retirement benefits in the Bill. There was no pressure for staff layoff. Instead, staff redeployment arrangements were being considered;
- (b) interests of existing customers would be protected. Due diligence would be carried out by Clifford Chance, solicitors for Bank of East Asia and the Transferring Companies, 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 companies is a party.

Members may refer to minutes of the meeting (LC Paper No. CB(1) 787/02-03) and the speaking note of the Executive Director & Deputy Chief Executive of Bank of East Asia (LC Paper No. CB(1) 542/02-03(01)) for details.

## **Conclusion**

13. The legal and drafting aspects of the Bill are legally in order. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

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