

DAO HENG BANK LIMITED (MERGER) ORDINANCE

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 11 OF 2003

L.S.

TUNG Chee-hwa
Chief Executive
27 March 2003

An Ordinance 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.

[28 March 2003]

Preamble

WHEREAS—

- (a) Dao Heng Bank Limited (道亨銀行有限公司) (hereinafter called “Dao Heng Bank”) is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank licensed under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong and elsewhere;
- (b) DBS Kwong On Bank Limited DBS 廣安銀行有限公司 (hereinafter called “DBS Kwong On Bank”) is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank licensed under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong;
- (c) Overseas Trust Bank, Limited (海外信託銀行有限公司) (hereinafter called “Overseas Trust Bank”) is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank licensed under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong;
- (d) Dao Heng Bank, DBS Kwong On Bank and Overseas Trust Bank are members of the DBS Group;
- (e) for the better conduct of the businesses of the DBS Group, it is expedient that the respective undertakings of Dao Heng Bank, DBS Kwong On Bank and Overseas Trust Bank be merged and that such merger should occur by means of a transfer of the undertakings of DBS Kwong On Bank and Overseas Trust Bank to Dao Heng Bank; and

- (f) in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of DBS Kwong On Bank and Overseas Trust Bank, it is expedient that the said undertakings be transferred to Dao Heng Bank by this Ordinance without interference with the conduct and continuity of the respective businesses of Dao Heng Bank, DBS Kwong On Bank and Overseas Trust Bank.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Dao Heng Bank Limited (Merger) Ordinance.

2. Interpretation

- (1) In this Ordinance, unless the subject or context otherwise requires—
- “appointed day” (指定日期) means such day as may be appointed pursuant to section 3;
- “customer” (客戶) means any person having a banking account or other dealing, transaction or arrangement with a transferring bank;
- “Dao Heng Bank” (道亨銀行) means Dao Heng Bank Limited (道亨銀行有限公司);
- “data protection principles” (保障資料原則) means the data protection principles set out in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486);
- “DBS Group” (DBS 集團) means The Development Bank of Singapore Limited and its subsidiaries;
- “DBS Kwong On Bank” (DBS 廣安銀行) means DBS Kwong On Bank Limited (DBS 廣安銀行有限公司);
- “excluded property” (除外財產) means—
- (a) the common seal of each of the transferring banks;
 - (b) documents required to be kept by the transferring banks pursuant to the Companies Ordinance (Cap. 32);
 - (c) the issued share capital of DBS Kwong On Bank represented by the paid-up shares beneficially owned by DBS Group Holdings (Hong Kong) Ltd.;
 - (d) the issued share capital of Overseas Trust Bank represented by the paid-up shares beneficially owned by Dao Heng Bank;
- “existing” (現有) means existing, outstanding or in force immediately before the appointed day;

- “liabilities” (法律責任) includes duties and obligations of every description (whether present or future, actual or contingent);
- “Overseas Trust Bank” (海外信託銀行) means Overseas Trust Bank, Limited (海外信託銀行有限公司);
- “Privacy Commissioner” (私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap. 486);
- “property” (財產) means property and assets of every description wheresoever situate and rights of every description (whether present or future, actual or contingent), and includes property held on trust or in a fiduciary capacity and security interests, benefits and powers of every description but does not include the excluded property;
- “Registrar of Companies” (公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32);
- “security interest” (抵押權益) includes a mortgage or charge (whether legal or equitable and including any sub-mortgage), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment by way of security, indemnity, right of set-off, flawed asset arrangement, agreement or undertaking (whether in writing or not) or other means (in each case made, granted, arising or subsisting under any applicable law) of securing payment or discharge of a debt or liability (whether present or future, actual or contingent);
- “subsidiary” (附屬公司) has the meaning assigned to it by section 2 of the Companies Ordinance (Cap. 32);
- “transferring banks” (各移轉銀行) means DBS Kwong On Bank and Overseas Trust Bank, and a reference to a “transferring bank” is a reference to one of the transferring banks;
- “undertakings” (業務) means the businesses and all existing property, reserves and liabilities of the transferring banks of whatsoever nature, other than the excluded property;
- “will” (遺囑) includes a codicil and any other testamentary writing.

(2) Any reference in this Ordinance to property or liabilities of a transferring bank is a reference to property or liabilities to which the transferring bank is for the time being entitled or subject (whether beneficially or in any fiduciary capacity), wherever such property or liabilities are situated or arise and whether or not capable of being transferred or assigned by the transferring bank, and whether the transferring bank is entitled to such property or subject to such liabilities under the laws of Hong Kong or under the laws of any country, territory or place outside Hong Kong.

(3) Any body politic or corporate and any other person or persons whose rights are affected by any of the provisions of this Ordinance shall be deemed to be mentioned herein.

3. Notice of appointed day

(1) The directors of Dao Heng Bank may appoint a day for the purposes of this Ordinance.

(2) Dao Heng Bank and the transferring banks shall give joint notice in the Gazette stating the day so appointed save that, in the event that such day proves not to be the appointed day for any reason, Dao Heng Bank and the transferring banks shall give joint notice in the Gazette to that effect and shall again give joint notice in the Gazette stating the next day so appointed or, as the case may be, the day which was the appointed day.

4. Change of name, reduction of capital and revocation of banking licence

(1) On the appointed day, by virtue of this Ordinance—

- (a) the names of DBS Kwong On Bank and Overseas Trust Bank shall, in accordance with this section, be respectively changed 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)”;
- (b) the authorized and issued share capital of DBS Kwong On Bank shall be reduced to \$10 comprising 5 ordinary shares of \$2 each and 374 999 995 ordinary shares of \$2 each shall be cancelled;
- (c) the authorized and issued share capital of Overseas Trust Bank shall be reduced to \$10 comprising 8 ordinary shares of \$1.25 each and 1 999 999 992 ordinary shares of \$1.25 each shall be cancelled; and
- (d) the banking licence of each of the transferring banks shall, in accordance with Part V of the Banking Ordinance (Cap. 155), be revoked on and from a day to be appointed by the Monetary Authority which day shall be published in the Gazette.

(2) Not later than 7 days before the appointed day, DBS Kwong On Bank shall deliver to the Registrar of Companies a copy of this Ordinance together with a minute, signed by a director or the secretary of DBS Kwong On Bank confirming the reduction of share capital and cancellation of shares referred to in subsection (1).

(3) Not later than 7 days before the appointed day, Overseas Trust Bank shall deliver to the Registrar of Companies a copy of this Ordinance together with a minute, signed by a director or the secretary of Overseas Trust Bank confirming the reduction of share capital and cancellation of shares referred to in subsection (1).

(4) The Registrar of Companies shall, pursuant to this Ordinance, register the copies of the Ordinance and the minutes delivered to him pursuant to subsections (2) and (3) and on the appointed day shall—

- (a) enter the new names of the transferring banks in the register in place of their former names;
- (b) issue to DBS Kwong On Bank a certificate of incorporation on change of name stating DBS Kwong On Bank's new name;
- (c) issue to Overseas Trust Bank a certificate of incorporation on change of name stating Overseas Trust Bank's new name; and
- (d) certify under his hand the registration of the Ordinance and the minutes which certificates shall be conclusive evidence of the reduction of the authorized and issued share capital of each of the transferring banks.

5. Vesting of the undertakings in Dao Heng Bank

(1) On the appointed day the undertakings shall, by virtue of this Ordinance and without further act or deed, be transferred to, and vest in, Dao Heng Bank to the intent that Dao Heng Bank shall succeed to the whole undertakings as if in all respects Dao Heng Bank were the same person in law as the relevant transferring bank.

(2) Where the transfer and vesting of any property and liabilities situate in any country, territory or place outside Hong Kong and forming part of the undertakings is governed otherwise than by the laws of Hong Kong, the transferring bank in question shall, if Dao Heng Bank so requires, so soon as is practicable after the appointed day, take all necessary steps for securing the effective transfer and vesting thereof in Dao Heng Bank and, pending such transfer and vesting, the transferring bank in question shall hold any such property and liabilities in trust absolutely for Dao Heng Bank.

6. Trust property and wills

(1) Any property vested or deemed to be vested in Dao Heng Bank by virtue of this Ordinance which immediately before the appointed day was held by a transferring bank, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement, will or other instrument (whether originally so appointed or not, and whether appointed under hand or seal, or by order of any court or otherwise), or as executor of the will, or administrator of the estate, of a deceased person or as judicial trustee appointed by order of any court, or in any other fiduciary capacity, shall, on and from the appointed day, be held by Dao Heng Bank alone or, as the case may be, jointly with such other person, in the same capacity upon the trusts, and with and subject to the powers, provisions and liabilities, applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property forming part of the undertakings became vested in a transferring bank, in any such fiduciary capacity as is referred to in subsection (1) (including in the case of a will any grant of probate thereof), and any provision in such instrument or order, or any existing contract or arrangement, for the payment to, or retention by, a transferring bank of remuneration for its services in any such fiduciary capacity, shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to the transferring bank not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, the transferring bank, there were substituted a reference to Dao Heng Bank provided always that this subsection shall not prevent Dao Heng Bank from varying the remuneration or scale of fees payable in accordance with the terms of the relevant instrument or order.

(3) Any will made before the appointed day which has not been proved in Hong Kong before the appointed day, and any will made on or after the appointed day, being a will forming part of the undertakings which appoints a transferring bank to be an executor, trustee or recipient of any property as trustee, shall, on and from the appointed day, be construed and have effect as if for any reference therein to such transferring bank as such executor, trustee or recipient or otherwise in connection with such appointment, not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, such transferring bank, there were substituted a reference to Dao Heng Bank.

(4) No testamentary gift shall be deemed by reason only of the operation of any of the provisions of this Ordinance.

7. Supplementary provisions

Without prejudice to the generality of any other provision of this Ordinance but subject to any provision of this Ordinance to the contrary effect, the following provisions of this section shall have effect other than in relation to the excluded property—

- (a) All existing contracts, agreements, insurance policies, options, novations, certificates, awards, land grants, conveyances, deeds, leases, licences, notices, permits, guarantees, documents granting or comprising any security interest, bonds, indemnities, mandates, instructions and other instruments and undertakings entered into by, made with, given to or by or addressed to a transferring bank (whether alone or with any other person and whether as principal or agent and whether in writing or not), shall be construed and have effect on and from the appointed day as if—

- (i) Dao Heng Bank had been a party thereto instead of such transferring bank;
 - (ii) for any reference (however worded and whether express or implied) to such transferring bank there were substituted, as respects anything falling to be done on or after the appointed day, a reference to Dao Heng Bank; and
 - (iii) any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of such transferring bank were, as respects anything falling to be done on or after the appointed day, a reference to the directors of Dao Heng Bank or, as the case may require, to such director, officer or employee of Dao Heng Bank as Dao Heng Bank may appoint for that purpose or, in default of appointment, to the director, officer or employee of Dao Heng Bank who corresponds as nearly as may be to the first-mentioned director, officer or employee.
- (b) Paragraph (a)(ii) shall, subject to the provisions of section 17, apply to any statutory provision, to any provision of any existing contract to which a transferring bank was not a party and to any provision of any other existing document (not being a contract or a will) as they apply to a contract to which that paragraph applies.
- (c) Any account between a transferring bank and a customer shall, on the appointed day, be transferred to Dao Heng Bank and become an account between Dao Heng Bank and such customer subject to the same conditions and incidents as theretofore; and each such account shall be deemed for all purposes to be a single continuing account; and any existing contracts, agreements, insurance policies, options, novations, certificates, awards, land grants, conveyances, deeds, leases, licences, notices, permits, guarantees, documents granting or comprising any security interest, bonds, indemnities, mandates, instructions and other instruments and undertakings entered into by, made with, given to or by or addressed to a transferring bank (whether alone or with any other person and whether as principal or agent and whether in writing or not), shall be construed and have effect on and from the appointed day as if any reference (however worded and whether express or implied) to such account between a transferring bank and a customer there were substituted, as respects anything falling to be done on or after the appointed day, and so far as the context permits, a reference to the continuing account between Dao Heng Bank and such customer:

Provided that nothing in this Ordinance shall affect any right of Dao Heng Bank or of any customer to vary the conditions or incidents subject to which any account is kept.

- (d) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent (whether in writing or not and whether or not in relation to an account) given to or by a transferring bank, either alone or jointly with another person, shall apply and have effect, on and from the appointed day, as if given to or by Dao Heng Bank or, as the case may be, to or by Dao Heng Bank jointly with such other person.
- (e) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, a transferring bank, or payable at any place of business of a transferring bank, whether so drawn, given, accepted or endorsed before, on or after the appointed day, shall have the same effect on and from the appointed day, as if it had been drawn on, or given to, or accepted or endorsed by Dao Heng Bank, or were payable at the same place of business of Dao Heng Bank.
- (f) The custody of any document or record, goods or other thing held by a transferring bank as bailee shall pass to Dao Heng Bank on the appointed day, and the rights and obligations of a transferring bank under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of Dao Heng Bank.
- (g)
 - (i) Any security interest held immediately before the appointed day by a transferring bank, or by a nominee or agent of or trustee for a transferring bank, as security for the payment or discharge of any liability shall, on and from the appointed day, be held by, or, as the case may require, by that nominee, agent or trustee for, Dao Heng Bank, and be available to Dao Heng Bank (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of that liability.
 - (ii) In relation to any security interest vested or deemed to be vested in Dao Heng Bank in accordance with the provisions of this Ordinance and any liability thereby secured, Dao Heng Bank shall be entitled to the rights and priorities and be subject to the obligations and incidents to which the transferring bank in question would have been entitled and subject if it had continued to hold the security interest.

- (iii) Without prejudice to the generality of subparagraph (ii), in any case where any existing liability subsists between a transferring bank and Dao Heng Bank or between 2 transferring banks, in respect of which a transferring bank or Dao Heng Bank, or a nominee or agent of or trustee for a transferring bank or Dao Heng Bank holds a security interest, that liability shall, for the purpose of enforcing or realizing that security interest, be deemed to continue in effect notwithstanding the vesting of the undertakings in Dao Heng Bank.
- (iv) Any security interest referred to in subparagraph (i), (ii) or (iii) and which extends to future advances or liabilities shall, on and from the appointed day, be available to Dao Heng Bank (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of future advances and liabilities to the same extent and in the same manner in all respects as future advances by, or liabilities to, a transferring bank or Dao Heng Bank were secured thereby immediately before that day.
- (v) Notwithstanding subparagraph (i), where immediately before the appointed day any security interest would not be available to Dao Heng Bank as security for the payment or discharge of any liability owing to it, or to any transferring bank as security for the payment or discharge of any liability owing to it, such security interest shall not become available to Dao Heng Bank as security for such liability on and from the appointed day by virtue of this Ordinance, unless—
 - (A) the terms of such security interest expressly provide otherwise;
 - (B) Dao Heng Bank obtains the written consent of the person or persons who granted such security interest; or
 - (C) such security interest arises at general law.
- (vi) Notwithstanding subparagraph (ii), where immediately before the appointed day, Dao Heng Bank would not, in respect of any liability owing to it, be entitled to the rights and priorities in relation to any security interest then in existence, or any transferring bank would not, in respect of any liability owing to it, be entitled to the rights and priorities in relation to any security interest then in existence, Dao Heng Bank shall not, in respect of such

liability, be entitled to such rights and priorities on and from the appointed day by virtue of this Ordinance, unless—

- (A) the terms of such security interest expressly provide otherwise;
 - (B) Dao Heng Bank obtains the written consent of the person or persons who granted such security interest; or
 - (C) such security interest arises at general law.
- (h) (i) Where by virtue of this Ordinance any right or liability of a transferring bank becomes or is deemed to become a right or liability of Dao Heng Bank, Dao Heng Bank and all other persons shall, on and from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that right or liability as if it had at all times been a right or liability of Dao Heng Bank; and any legal proceedings or application to any authority existing or pending immediately before the appointed day by or against a transferring bank may be continued by or against Dao Heng Bank.
- (ii) Where any right or liability of a transferring bank was before the appointed day the subject of arbitral proceedings to which the transferring bank was a party, Dao Heng Bank shall on and from the appointed day automatically be substituted for such transferring bank as a party to those proceedings, without the need for consent from any other party or from the arbitrator.
- (i) Any judgment or award obtained by or against a transferring bank and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against such transferring bank, become enforceable by or against Dao Heng Bank.
- (j) Any court order which applies to a transferring bank shall on and from the appointed day apply to Dao Heng Bank instead of to such transferring bank.
- (k) Nothing in this Ordinance shall terminate or prejudicially affect the appointment, authority, rights or powers of any receiver or of any receiver and manager appointed by a transferring bank, whether alone or with others, before the appointed day.

- (l) The Privacy Commissioner may, on and from the appointed day, exercise in respect of Dao Heng Bank any power under the Personal Data (Privacy) Ordinance (Cap. 486) which he could have immediately before the appointed day exercised in respect of a transferring bank in respect of a breach or alleged breach by a transferring bank of that Ordinance or the data protection principles; but the transfer to, and vesting in, Dao Heng Bank by this Ordinance 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 to which a transferring bank is subject immediately before the appointed day or to a contravention by Dao Heng Bank or a transferring bank of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

8. Accounting treatment of Dao Heng Bank and the transferring banks

- (1) On and from the appointed day, by virtue of this Ordinance and notwithstanding the provisions of any other Ordinance—
- (a) the balance sheets and profit and loss accounts of the transferring banks and Dao Heng Bank for the accounting period of each of the transferring banks and Dao Heng Bank in which the appointed day falls shall be prepared in all respects as if the undertakings had vested or deemed to have vested in Dao Heng Bank pursuant to section 5 on the first day of such accounting period of Dao Heng Bank;
 - (b) all property and liabilities of DBS Kwong On Bank (other than excluded property) shall be transferred to Dao Heng Bank at their carrying value in the accounts of DBS Kwong On Bank on the first day of such accounting period of Dao Heng Bank;
 - (c) all property and liabilities of Overseas Trust Bank (other than excluded property) shall be transferred to Dao Heng Bank at their carrying value in the consolidated accounts of Dao Heng Bank on the first day of such accounting period of Dao Heng Bank;
 - (d) every existing reserve of DBS Kwong On Bank relating to the property and liabilities vested in Dao Heng Bank by virtue of this Ordinance as stated in the accounts of DBS Kwong On Bank on the first day of such accounting period of Dao Heng Bank shall be transferred to and for all purposes be and become a reserve of Dao Heng Bank;

- (e) every existing reserve of Overseas Trust Bank relating to the property and liabilities vested in Dao Heng Bank by virtue of this Ordinance as consolidated in the group accounts of Dao Heng Bank (including Overseas Trust Bank and Dao Heng Bank) on the first day of such accounting period of Dao Heng Bank shall be transferred to and for all purposes be and become a reserve of Dao Heng Bank; and
- (f) the amount, description and character of every reserve of Dao Heng Bank which shall come into being pursuant to paragraphs (d) and (e) shall be the same in all respects as those of the corresponding existing reserve of the transferring banks immediately before the first day of such accounting period of Dao Heng Bank, and all enactments and rules of law shall apply to or in respect of every such reserve of Dao Heng Bank in the same manner in all respects as they applied to or in respect of the corresponding existing reserve of the transferring banks immediately before the first day of such accounting period of Dao Heng Bank.

(2) Every reference in subsection (1) to an existing reserve shall include a reference to any reserve or similar provision, irrespective of its name or designation (and whether the amount thereof be positive or negative in nature) and, without prejudice to the generality of the foregoing, every such reference shall include a reference to any sums standing to the credit (or debit) of any profit and loss account.

(3) Without prejudice to the generality of subsection (1), any profits or losses of the transferring banks earned or incurred after the beginning of the financial year of the transferring banks in which the appointed day shall occur, shall, on and from the appointed day, and by virtue of this Ordinance, be treated for all purposes as profits or, as the case may be, losses, of Dao Heng Bank.

9. Taxation and revenue matters

(1) For the purposes of the Inland Revenue Ordinance (Cap. 112), on and from the appointed day Dao Heng Bank shall be treated as if it were the continuation of and the same person in law with regard to the undertakings as the transferring banks.

- (2) Accordingly (and without affecting the generality of subsection (1))—
 - (a) a vesting or deemed vesting in Dao Heng Bank of any property or liabilities by virtue of this Ordinance does not constitute a sale or other disposal of or a change in the nature of that property or the liability for any purpose under the Inland Revenue Ordinance (Cap. 112);

- (b) the aggregate amount of any losses sustained by the transferring banks which are capable of but have not been carried forward and set off against assessable profits of the transferring banks for the purposes of section 19C of the Inland Revenue Ordinance (Cap. 112) as at the end of the last complete financial year of the transferring banks are deemed to be losses of Dao Heng Bank and, accordingly, available for set off against the assessable profits of Dao Heng Bank for the purposes of that Ordinance.
- (3) The profits or losses of the transferring banks treated as profits or losses of Dao Heng Bank in accordance with section 8(3)—
 - (a) shall not be taken into account for the purpose of computing the profits and losses of the transferring banks which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for any year of assessment; and
 - (b) shall be taken into account for the purpose of computing the profits and losses of Dao Heng Bank which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for the year of assessment the basis period for which includes the appointed day.

10. Contracts of employment

(1) Section 7(a) shall apply to a contract for the employment of any person by a transferring bank and employment with a transferring bank and Dao Heng Bank under any such contract shall be deemed for all purposes to be a single continuing employment.

(2) No director, secretary or auditor of a transferring bank shall by virtue only of this Ordinance become a director, secretary or auditor, as the case may be, of Dao Heng Bank.

11. Pensions, provident funds and gratuity benefits

(1) The deeds and rules constituting or relating to the pension fund schemes and the provident fund schemes established for the benefit of employees of the transferring banks, and the gratuity benefits payable by the transferring banks shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to the transferring banks there were substituted a reference to Dao Heng Bank.

(2) No officer or employee of a transferring bank who becomes an officer or employee of Dao Heng Bank by virtue of this Ordinance shall, by virtue only of this Ordinance, be entitled to participate in any pension fund scheme of, provident fund scheme of, or gratuity benefits payable by Dao Heng Bank, and no existing officer or employee of Dao Heng Bank shall, by virtue only of this Ordinance, be entitled to participate in any pension fund scheme of, provident fund scheme of, or gratuity benefits payable by a transferring bank.

12. Waiver of prohibition of merger

(1) Any provision contained in any contract or other document to which a transferring bank or Dao Heng Bank or any of their respective subsidiaries is a party which prohibits or has the effect of prohibiting the transfer and vesting or deemed transfer and vesting of any of the undertakings of the transferring banks in Dao Heng Bank shall be deemed by this Ordinance to have been waived.

(2) Any provision contained in any contract or other document to the effect that a breach of contract or a default shall occur or be deemed to occur as a result of the transfer and vesting or deemed transfer and vesting of any of the undertakings of the transferring banks in Dao Heng Bank, and to which a transferring bank or Dao Heng Bank or any of their respective subsidiaries is a party, shall be deemed by this Ordinance to have been waived.

13. Evidence: books and documents

(1) All books and other documents which would, before the appointed day, have been evidence in respect of any matter for or against a transferring bank shall be admissible in evidence in respect of the same matter for or against Dao Heng Bank.

(2) In this section, “documents” (文件) has the same meaning as in section 46 of the Evidence Ordinance (Cap. 8).

14. Part III of Evidence Ordinance (Cap. 8)

(1) On and from the appointed day, Part III of the Evidence Ordinance (Cap. 8) shall apply to the banker’s records of the transferring banks vested or deemed to be vested in Dao Heng Bank by virtue of this Ordinance, and to entries made in those records before the appointed day, as if such records were the records of Dao Heng Bank.

(2) For the purposes of section 20 of the Evidence Ordinance (Cap. 8), banker's records which are deemed to have become the banker's records of Dao Heng Bank by virtue of this Ordinance shall be deemed to have been the ordinary banker's records of Dao Heng Bank at the time of the making of any entry therein which purports to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

(3) For the purposes of sections 40 and 41 of the Evidence Ordinance (Cap. 8), documents previously in the custody or control of the transferring banks shall by virtue of this Ordinance be deemed to be documents previously in the custody or control of Dao Heng Bank.

(4) In this section, "banker's records" (銀行紀錄) shall be construed in accordance with section 2 of the Evidence Ordinance (Cap. 8).

15. Evidence of vesting and transfer

(1) The production of a Government Printer's copy of this Ordinance shall, for all purposes, be conclusive evidence of the vesting and transfer or deemed vesting and transfer of any property and liabilities of the transferring banks in Dao Heng Bank in accordance with the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1)—

- (a) a Government Printer's copy of this Ordinance, together with evidence of publication of notice of the appointed day, shall, in relation to any registered securities transferred to, and vested or deemed to be vested in, Dao Heng Bank by virtue of this Ordinance, operate for all purposes as a duly executed instrument of transfer in respect of the transfer of such registered securities from the transferring banks to Dao Heng Bank;
- (b) any deed or other document made or executed on or after the appointed day, whereby Dao Heng Bank or a transferring bank, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by a transferring bank immediately before the appointed day and forming part of the undertakings, whether alone or jointly with any other person, shall be sufficient evidence that the interest of the transferring bank in that property is vested or deemed to be vested in Dao Heng Bank under this Ordinance;

- (c) where there is any other transaction or purported transaction by Dao Heng Bank or a transferring bank on or after the appointed day in connection with, or in relation to, any property or liabilities which are property or liabilities of the transferring banks immediately before that day and forming part of the undertakings, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that Dao Heng Bank has full power and authority for that transaction as if the property or liabilities were vested or deemed to be vested in it under this Ordinance;
- (d) a certificate given by or on behalf of Dao Heng Bank at any time that any property or liabilities specified in the certificate (which property or liabilities immediately before the appointed day are the property or liabilities of a transferring bank) are or, as the case may be, are not, deemed to be vested in Dao Heng Bank under this Ordinance, shall be conclusive evidence for all purposes of the fact so certified.

(3) Nothing in subsection (2)(c) or (d) shall affect the liability of Dao Heng Bank and each of the transferring banks to one another in respect of anything done, or purporting to have been done, by any of them in connection with, or in relation to, any property or liabilities.

(4) In subsection (2)—

- (a) “convey” (轉易) includes mortgage, charge, lease, assent, vest by way of vesting declaration or vesting instrument, disclaim, release or otherwise assure; and
- (b) “registered securities” (註冊證券) means shares, stocks, debentures, loans, bonds, units of a unit trust scheme or other shares of the investments subject to the trusts of such a scheme, and other securities of any description which are transferable and the holders of which are entered in a register (whether maintained in Hong Kong or not).

(5) Nothing in this section applies to any property falling within section 5(2).

16. Interests in land

(1) The vesting or deemed vesting in Dao Heng Bank of an interest in land by virtue of this Ordinance shall not—

- (a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of section 53(4)(a) or (7)(a), 119E(2) or 119H(1)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7); or

- (b) constitute an assignment or underlease of, or an agreement to assign or underlet, that interest for the purposes of section 6(1)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7); or
- (c) operate so as to merge any leasehold interest in the reversion expectant on it; or
- (d) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest for the purposes of any provision contained in any instrument concerning or affecting that interest; or
- (e) operate as a breach of covenant or condition against alienation; or
- (f) give rise to any forfeiture, damages or other right of action; or
- (g) invalidate or discharge any contract or security interest; or
- (h) extinguish, affect, vary, diminish or postpone any priority of that interest, whether under the Land Registration Ordinance (Cap. 128), at law or in equity.

(2) All existing registration of any interest in land in the name of a transferring bank (whether alone or with any other person) immediately before the appointed day shall be construed and have effect on and from the appointed day as if the name “Dao Heng Bank Limited (道亨銀行有限公司)” had been entered on the land register instead of the name of such transferring bank.

(3) To enable Dao Heng Bank to complete title, if thought fit, to any property transferred to it and vested or deemed to be vested in it by virtue of this Ordinance by notice of title, deed, instrument or otherwise, or to deduce title, this Ordinance shall be deemed to be, and may be used as an assignment, conveyance, transfer or, as the case may be, general disposition of such property in favour of Dao Heng Bank.

(4) Dao Heng Bank shall register or cause to be registered in the Land Registry a Government Printer’s copy of this Ordinance against a property transferred to it and vested or deemed to be vested in it by virtue of this Ordinance in respect of the vesting of all the properties of the transferring banks transferred to and vested or deemed to be vested in Dao Heng Bank by virtue of this Ordinance.

(5) For the avoidance of doubt, nothing in this section shall exempt Dao Heng Bank and the transferring banks from the provisions of the Stamp Duty Ordinance (Cap. 117).

17. Saving for enactments concerning banking institutions

Nothing in this Ordinance shall exempt Dao Heng Bank or a transferring bank or any subsidiary of Dao Heng Bank or a transferring bank from the provisions of any enactment regulating the carrying on of the business of any of them.

18. Saving for companies

Nothing in this Ordinance shall prejudice the powers of Dao Heng Bank to alter its memorandum and articles of association or to dispose of, or deal with, its property, security interests or liabilities or to carry on or discontinue any part of its business; and nothing in this Ordinance shall prejudice the powers of any member of the DBS Group to alter its memorandum and articles of association or to dispose of, or deal with, its property, security interests or liabilities before the appointed day.

19. Saving

Nothing in this Ordinance 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 this Ordinance and those claiming by, from or under them.