

LEGISLATIVE COUNCIL BRIEF

WING HANG BANK, LIMITED (MERGER) BILL

Introduction

1. The Chief Executive granted his consent for Wing Hang Bank, Limited (Merger) Bill (the *Bill*) to be introduced before the Legislative Council on 12 May 2004. This Bill is introduced under Article 74 of the Basic Law by Legislative Council member, Dr. Hon. David Li Kwok-po, GBS, JP. The Financial Affairs Panel of the Legislative Council was consulted regarding the Bill on 1 March 2004, and Members supported the general objectives of the Bill.

Background and Purpose

2. The Bill provides for the merger (*Merger*) of Chekiang First Bank, Limited (*CFB*) with Wing Hang Bank, Limited (*Wing Hang*). The intention of the Merger is to allow Wing Hang to consolidate its banking business with CFB to increase efficiency through economies of scale. Following Wing Hang's acquisition of all of the outstanding shares of CFB, effective 30 September 2003, CFB and its subsidiaries are now members of the Wing Hang Group.

3. In a number of jurisdictions, such as the United States, Japan and Switzerland, two banks 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 bank mergers 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 bank which are governed by Hong Kong law. Given the large number of outstanding agreements between CFB and its customers, it is not practical to transfer such assets and liabilities by way of novation and assignment to Wing Hang.

Envisaged Benefits

4. It is the Government's stated policy to support consolidation of the banking 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 bank mergers where reasonable proposals are submitted for consolidation. This is, however, always subject to the overriding aim of promoting the stability of the banking system and providing an appropriate degree of protection to depositors in the merged institutions and to depositors generally. The Hong Kong Monetary Authority (*HKMA*) has no objection to the proposed merger of CFB's banking businesses being effected by way of a private bill such as the Bill.

5. The Bill has advantages for CFB's customers, who will have the reassurance that all Hong Kong law governed property and liabilities have been properly transferred to Wing Hang. Such customers will also not be inconvenienced by having to sign new customer documentation. Further, the basis of the transfer of such property and liabilities between Wing Hang and CFB will be publicly known and uniform. In addition, following the merger, the consolidated surviving bank

should be financially stronger, contributing to the stability of the banking sector in Hong Kong.

6. The Bill also has advantages for CFB's and Wing Hang's shareholders. The two Hong Kong banks will be combined into a single bank, Wing Hang, facilitating economies of scale.

7. Since the early 1980s the Legislative Council has passed seventeen ordinances implementing mergers of banks and other authorised institutions. The Bill is based on the form of the six most recent bank merger ordinances enacted by the Legislative Council between 2001 and 2003.

The Bill

8. The purpose of the Bill is to transfer the undertakings of CFB to Wing Hang. Wing Hang and CFB are both authorised institutions regulated by the Hong Kong Monetary Authority (*HKMA*) and are incorporated in Hong Kong. In conjunction with the Merger pursuant to the Bill, CFB will seek the revocation of its banking licence issued by the HKMA pursuant to the Banking Ordinance. CFB is not listed on The Stock Exchange of Hong Kong Limited.

9. The Bill provides for the vesting of the undertakings of CFB to and in Wing Hang on the appointed day. Except for a very limited range of excluded property, as explained in Section 10(a) of this brief, all of the business of CFB will form part of the undertakings vested in Wing Hang by the Bill.

10. The key provisions of the proposed Bill are similar to those of the recently enacted merger bills and are summarised in the following paragraphs.

- (a) **Clause 2** sets out the definitions of certain terms used in the Bill. In particular, there is a definition of "excluded property" which follows the same formulation used in The Bank of China (Hong Kong) Limited (Merger) Ordinance. A very limited range of property is excluded (for example, the common seal, documents required by the Companies Ordinance and the issued share capital of CFB) only for the purpose of complying with the Companies Ordinance, and no discretion is given to Wing Hang or CFB to exclude any property or liabilities from the vesting of undertakings.
- (b) **Clause 3** provides that the board of directors of Wing Hang may determine an appointed day upon which the Merger will take effect and that such appointed day must be notified by both CFB and Wing Hang in the Gazette.
- (c) **Clause 4** provides that CFB's name will be changed to "Chekiang First Limited (浙江第一有限公司)" on the appointed day. In addition, CFB's authorized and issued share capital will be reduced on the appointed day, and its banking licence will be revoked on a day determined by the HKMA and notified in the Gazette. The current intention is that this day will coincide with the appointed day upon which the merger will take effect.

- (d) **Clause 5** is the main transfer and vesting provision in the Bill. It provides that the undertakings of CFB (not including the “excluded property”) shall transfer to and vest in Wing Hang as if Wing Hang were the same person in law as CFB upon the appointed day.
- (e) **Clause 6** deals with property which, before the merger, is held by CFB in a capacity as a trustee. It provides that in such case, the relevant document should be read as if references to the Transferring Bank were references to Wing Hang.
- (f) **Clauses 7(a) to (k)** provide that all contracts and agreements made with, given to or by or addressed to CFB (other than excluded property) shall, after the merger takes effect, be construed as if Wing Hang had been the original party instead of CFB and, accordingly, all references to CFB must be construed as if they were to Wing Hang. **Clauses 7(a) to (k)** also provide for accounts, negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgements to be transferred to Wing Hang upon the appointed day. **Clauses 7(g)(v) and (vi)** are provisions which seek to reflect previous concerns in respect of other bank mergers expressed by Members of the Legislative Council regarding the possible increase of security or charges over customers' assets as a result of the merger. These provisions seek to ensure that Wing Hang's existing charges and security interests will not be expanded over assets previously held by CFB of a common customer of CFB and Wing Hang.
- (g) **Clause 7(1)** provides that the transfer of personal data from CFB to Wing Hang under the Bill shall not result in a breach of any duty of confidentiality or a contravention of the Personal Data (Privacy) Ordinance. The Privacy Commissioner may exercise in respect of Wing Hang any power which he could, before the merger, have exercised in respect of CFB.
- (h) **Clause 8** provides for the accounting treatment of Wing Hang following the merger. It provides that the balance sheets and profit and loss accounts of CFB and Wing Hang 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 Wing Hang on the first day of such accounting period of Wing Hang.
- (i) **Clause 9** provides for the taxation arrangements following the merger. It also provides that for the purposes of the Inland Revenue Ordinance, Wing Hang shall be treated as if it were the same person in law with regard to the undertakings as CFB on and from the appointed day and any profits or losses of CFB shall be treated as profits and losses of Wing Hang. **Clause 9** is intended to have a similar effect to the provisions dealing with taxation matters in previous bank merger ordinances. The effect of this provision is consistent with Government policy on taxation, as stated in the context of recently enacted bank merger ordinances.
- (j) **Clause 10** provides that, in respect of all of CFB's contracts of employment with those employees who are transferred by the Bill to Wing Hang at the merger, such contracts shall be deemed for all purposes to be a single

continuing employment. **Clause 10** also provides that no directors, secretary or auditor of CFB shall, by virtue of the merger only, automatically become a director, secretary or auditor of Wing Hang.

- (k) **Clause 11** ensures that CFB's employees who are members of pension fund schemes of CFB shall continue to be members of these schemes after the transfer of CFB's undertakings to Wing Hang. It also ensures that former employees of CFB and existing employees of Wing Hang shall continue to enjoy the same rights following the transfer as before under their respective pension schemes and that the transfer by virtue of the Bill shall not automatically bestow any additional entitlements to such employees.
- (l) **Clause 12** prevents the merger of CFB with Wing Hang constituting an event of default or a termination event in a contract or agreement to which a Transferring Bank or Wing Hang or their respective subsidiaries is a party.
- (m) **Clauses 13 to 15** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against CFB which, transferred by the Bill, becomes admissible in evidence after the merger in respect of the same matter for or against Wing Hang. Clause 14 provides that, for the purposes of the Evidence Ordinance, CFB's banker's records vested in Wing Hang by the Bill shall be treated as if these were always Wing Hang's banker's records.
- (n) **Clause 16** deals with the effect of the merger on interests in land in Hong Kong held by CFB and provides that the vesting of CFB's interests in land in Wing Hang pursuant to the merger does not constitute an acquisition, assignment, transfer or parting with possession under the Landlord and Tenant (Consolidation) Ordinance. **Clause 16** also provides that the vesting in Wing Hang of CFB'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 stipulates that nothing in **Clause 16** exempts either Wing Hang or CFB from the provisions of the Stamp Duty Ordinance.
- (o) **Clause 17** states that nothing in the Bill shall exempt either CFB or Wing Hang from any of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.
- (p) **Clause 18** provides that the Bill does not prevent Wing Hang from amending its memorandum and articles of association or dealing with its property or business generally. **Clause 18** also provides that nothing in the Bill prevents any member of the Wing Hang Group from altering its memorandum and articles of association or dealing with its property generally before the appointed day.
- (q) **Clause 19** 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

11. The legislative timetable is as follows –

Financial Affairs Panel	1 March 2004
Publication in the Gazette for the first time	14 May 2004
Publication in the Gazette for the second time	21 May 2004
Member in charge of the Bill gives notice of intention to present the Bill to the Clerk of the Legislative Council	24 May 2004
First Reading and adjournment of Second Reading debate	9 June 2004

Economic Implications

12. The Bill facilitates the merger of CFB with Wing Hang. The consolidation of the banking 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.

Taxation

13. As mentioned above, **Clauses 8 and 9** have the effect of deeming Wing Hang as one and the same as CFB in law, and allowing any profits and losses of CFB to be treated as the profits and losses of Wing Hang from the beginning of the financial year of the merger.

14. In the recently enacted merger bills, the Government has allowed the merged entity, for tax assessment purposes, to carry forward any losses accumulated by any of the merging entities. As CFB carries no accumulated losses for tax assessment purposes, the Bill should not result in any loss of Government's revenue.

Public Consultation

15. The Administration is in support of the Bill. The Financial Affairs Panel have considered the Bill and each of the Hong Kong Monetary Authority, the Financial Services and the Treasury Bureau, the Department of Justice, the Commissioner of Inland Revenue, the Companies Registrar, the Land Registrar, the Privacy Commissioner for Personal Data, the Securities and Futures Commission and the Mandatory Provident Fund Schemes Authority have been consulted on the Bill and their comments, if any, have been accommodated. In response to certain questions that were raised at the Financial Affairs Panel meeting on 1 March 2004, Wing Hang sent a letter to the Financial Services and the Treasury Bureau and the Hong Kong Monetary Authority 9 March 2004 explaining consultation activities with staff regarding the banks' plans for benefit changes, branch closures and retrenchment.

The letter described the efforts to maintain transparency and communication between management and staff, the likelihood that most staff could be redeployed to fill the vacancies created by attrition during the ongoing hiring freeze, and the efforts being put in place to outpace any staff who cannot be redeployed. Additional consultation with the public has not been deemed necessary. Arrangements to answer questions from customers and the public will be made as part of the Merger notification exercise.

Publicity

16. The Bill was published in the Gazette on 14 May 2004 and 21 May 2004 and notice of the Bill has been given by way of advertisements in The Standard and Sing Tao on 14 May 2004 and 17 May 2004. In addition, a further press release will be issued by Wing Hang upon completion of the legislative process.

Enquiries

17. Any enquiries about this brief can be directed to Mr. Andrew Burns at the Office of Legislative Councillor, Dr. Hon. David Li Kwok-po, GBS, JP at telephone number 2842 3499 or fax number 2526 1909.

Dr. Hon. David Li Kwok-po, GBS, JP
1 June 2004