

**立法會**  
***Legislative Council***

LC Paper No. LS 66/03-04

**Paper for the House Committee Meeting  
on 16 April 2004**

**Legal Service Division Report on  
Standard Chartered Bank (Hong Kong) Limited (Merger) Bill**

**(Private Member's Bill)**

**I. SUMMARY**

1. **Object of the Bill** To provide for the vesting in Standard Chartered Bank (Hong Kong) Limited of the undertakings of the Hong Kong Branch of Standard Chartered Bank, Manhattan Card Company Limited, Standard Chartered Finance Limited, Standard Chartered International Trade Products Limited and Chartered Capital Corporation 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) The Bill is similar to recently enacted bank merger ordinances, and the provision relating to the issue of legal tender notes follows closely that in the Bank of China (Hong Kong) Limited (Merger) Ordinance.
  
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 2 February 2004.
  
5. **Conclusion** 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 Standard Chartered Bank (Hong Kong) Limited ("the Bank") of the undertakings of the Hong Kong Branch of Standard Chartered Bank, Manhattan Card Company Limited, Standard Chartered Finance Limited, Standard Chartered International Trade Products Limited and Chartered Capital Corporation Limited (collectively "the Transferring Entities") and for other related purposes.

### **LegCo Brief Reference**

2. LegCo Brief dated 19 March 2004 issued by Dr Hon David LI Kwok-po, GBS, JP.

### **Date of First Reading**

3. 24 March 2004.

### **Comments**

#### *Private Member's Bill*

4. This is a private bill presented by Dr Hon David LI Kwok-po, GBS, JP. According to the Preamble, the Transferring Entities are members of the Standard Chartered group of companies of which Standard Chartered PLC is the ultimate holding company. The Bill provides for the transfer of the undertakings of the Transferring Entities to the Bank, a company newly incorporated under the laws of Hong Kong for the purpose of the merger and a bank authorized under the Banking Ordinance (Cap. 155).

5. 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, taxation, issue of legal tender notes and the control of tenancies. By a letter dated 9 March 2004, 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 24 March 2004.

Appointed day

6. The vesting of undertakings would take effect on a day appointed by the directors of the Bank. Under Clause 3 of the Bill, the Bank and the Transferring Entities shall give joint notice in the Gazette of the appointed day, and such notice would not be subsidiary legislation. On the appointed day, without further act or deed, the Bank would succeed to the undertakings of the Transferring Entities as if in all respects the Bank were the same person in law as the relevant Transferring Entities.

7. The undertakings of the Transferring Entities would not include "excluded property and liabilities". The term is so defined as to facilitate compliance with the Companies Ordinance, performance of obligations by the Transferring Entities under the merger agreement and payment of retained earnings by the Transferring Entities to members of the Standard Chartered Group. Slaughter and May ("the Solicitors"), solicitors for Standard Chartered Bank and the Transferring Entities, have confirmed that the retained earnings excluded from the undertakings are earnings after tax. No discretion is given to the Bank to exclude any property or liabilities from the vesting of undertakings.

8. Under the Bill, the undertakings of the Transferring Entities would be transferred to the Bank at their carrying value in the accounts of the relevant Transferring Entity immediately prior to the appointed day. The Bill does not seek the backdating of accounting treatment. The Transferring Entities would be liable for taxation in Hong Kong up to the appointed day, and the Bank would be so liable on and after the appointed day. The Solicitors have clarified that backdating to the first day of the accounting period in which the appointed day falls is not acceptable to the United Kingdom tax authorities. The Inland Revenue Department has also confirmed that there is no implication on Hong Kong tax.

9. On the appointed day, the authorized and issued share capital account of Manhattan Card Company Limited, Standard Chartered Finance Limited and Chartered Capital Corporation Limited as well as the share premium account of Manhattan Card Company Limited and Chartered Capital Corporation Limited would be reduced. The reduction would be effected by cancelling the unissued shares and repaying specified amounts to existing members of the relevant companies.

10. The restricted banking licence of Manhattan Card Company Limited 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 to tie in the date of revocation with the appointed day.

11. According to the Information Note to the Panel on Financial Affairs, Standard Chartered Bank would, subject to the approval of the Monetary Authority, retain its banking licence for a transitional period. The Solicitors have clarified that the purpose is to enable the transfer by agreement of property and liabilities outside

Hong Kong after the appointed day. Under Clause 5(2) of the Bill, the Transferring Entities shall so soon as is practicable after the appointed day, take all necessary steps for securing the effective transfer and vesting of these property and liabilities. Pending the transfer and vesting of undertaking governed otherwise than by the laws of Hong Kong, the Transferring Entity in question shall hold such property and liabilities in trust absolutely for the Bank.

*Issue of legal tender notes*

12. Standard Chartered Bank is a note-issuing bank under the Legal Tender Notes Ordinance (Cap. 65). Under the Bill, Standard Chartered Bank shall cease to be a note-issuing bank and the Bank shall become a note-issuing bank, in each case with effect from the appointed day, subject to the Financial Secretary (with the approval of the Chief Executive in Council) by a written notice authorizing The Bank to issue bank notes and by notice in the Gazette amending the Schedule to the Legal Tender Notes Issue Ordinance (Cap. 65). The notice in the Gazette would be subsidiary legislation. Clause 7 of the Bill follows closely the provision relating to the issue of legal tender notes in the Bank of China (Hong Kong) Limited (Merger) Ordinance (Cap. 1167).

*Similarities with recently enacted bank merger ordinances*

13. We note that the Bill contains provisions similar to those in recently enacted bank merger ordinances dealing with the continuance of employment, liability of persons providing security interest to the Transferring Entities, the duty of confidentiality and the protection of personal data.

**Public Consultation**

14. 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 and their comments have been accommodated.

**Consultation with LegCo Panel**

15. The policy aspects of the Bill were discussed at the meeting of the Panel on Financial Affairs on 2 February 2004. Members noted that the Administration and the Hong Kong Monetary Authority supported the Bill. Members also noted the following points:

- (a) the merger would not result in the reduction in the number of jobs and branch offices of the Transferring Entities or reduction in staff remuneration;

- (b) Standard Chartered Bank would inform its customers of the merger and the impact on them, including arrangements for the transfer of their personal data;
- (c) Standard Chartered Bank was a note-issuing bank. If the Bank was authorized as a note-issuing bank, this would take effect on the same day as the appointed day; and
- (d) the merger would not result in any reduction in tax revenue receivable by the Government.

16. Some members expressed support for the proposed merger. Representatives of Standard Chartered Bank advised members that so far, none of the staff concerned had raised objection to the proposed merger. The Administration confirmed that no additional expenditure would be required to be borne by the Hong Kong Monetary Authority as a result of the transfer of the note-issuing function arising from the proposed merger.

17. Members may wish to refer to the minutes of the meeting (LC Paper No. CB(1)1394/03-04) for details.

## **Conclusion**

18. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

Prepared by

Wong Sze-man, Bernice  
Assistant Legal Adviser  
Legislative Council Secretariat  
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