

立法會
Legislative Council

LC Paper No. LS85/03-04

**Paper for the House Committee Meeting
on 11 June 2004**

**Legal Service Division Report on
Wing Hang Bank Limited (Merger) Bill**

(Private Member's Bill)

I. SUMMARY

1. **Object of the Bill** To provide for the vesting in Wing Hang Bank Limited of the undertakings of Chekiang First 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 will be introduced to tide in with the Landlord and Tenant (Consolidation) (Amendment) Bill 2003, which is scheduled to resume Second Reading on 30 June 2004. The Committee Stage Amendment is legally in order and the Administration has no comment on it.

 - (c) The Bill is similar to other recently enacted bank merger legislation 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 1 March 2004.

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 Wing Hang Bank Limited ("Wing Hang Bank") of the undertakings of Chekiang First Bank, Limited ("Chekiang First Bank") and for other related purposes.

LegCo Brief Reference

2. LegCo Brief dated 1 June 2004 issued by Dr Hon David Li Kwok-po, GBS, JP.

Date of First Reading

3. 9 June 2004.

Comments

Private Member's Bill

4. This is a private bill presented by Dr Hon David Li Kwok-po, GBS, JP. Both Wing Hang Bank and Chekiang First Bank are companies incorporated under the laws of Hong Kong and licensed banks in Hong Kong. The Bill provides for the transfer of the undertakings of Chekiang First Bank to Wing Hang Bank.

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, the set-off of losses against profits of corporations and the control of tenancies as reflected in the relevant legislation. By a letter dated 12 May 2004, the Administration confirmed that the Chief Executive has given consent to 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.

Appointed day

6. The vesting of undertakings would take effect on the appointed day. Under Clause 3 of the Bill, Wing Hang Bank and Chekiang First Bank 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, Wing Hang Bank would succeed to the undertakings of Chekiang First Bank as if in all respects Wing Hang Bank were the same person in law as Chekiang First Bank.

7. On the appointed day, the name of Chekiang First Bank would be changed to "Chekiang First, Limited". Its authorized and issued share capital would be reduced and cancelled. Its banking licence 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

8. The Bill follows recently enacted bank merger legislation in the following respects:

- (a) the proposed definition of "excluded property" is to facilitate compliance with the Companies Ordinance (Cap. 32), and no discretion is given to Wing Hang Bank to exclude any property or liabilities from the vesting of undertakings;
- (b) the Bill proposes that Wing Hang Bank would be treated as if it were the continuation of and the same person in law with regard to the undertakings of Chekiang First Bank. According to the LegCo Brief, Chekiang First Bank does not have any accumulated losses for tax assessment purposes and the Bill should not result in any loss of Government's revenue;
- (c) the Bill seeks to deem for all purposes employment with Chekiang First Bank and Wing Hang Bank to be a single continuing employment;
- (d) there are provisions in the Bill that ensure the liability of persons providing security interest to Chekiang First Bank would not be increased or expanded by virtue of the Bill unless otherwise excepted; and
- (e) the Bill provides that the transfer to Wing Hang Bank of the undertakings of Chekiang First Bank and any disclosure to Wing Hang 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.

Committee Stage Amendment

9. Clause 16(1)(a) of the Bill seeks to provide that the vesting or deemed

vesting in Wing Hang Bank of an interest in land by virtue of the Bill shall not constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of, inter alia, sections 119E(2) or 119H(1)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). As members may be aware, sections 119E(2) and 119H(1)(a) of that Ordinance will be repealed if the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 is passed on 30 June 2004. Dr Hon David Li hence has indicated that he will move a Committee Stage Amendment to the Bill to repeal these two sections in that event (Appendix: copy of draft CSA).

Public Consultation

10. 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 (para. 15).

Consultation with LegCo Panel

11. The policy aspects of the Bill were discussed at the meeting of the Panel on Financial Affairs on 1 March 2004.

12. At the meeting, members expressed support for the proposed merger in general. On the impact of the proposed merger on the staff concerned, members were advised that former employees of Chekiang First Bank and existing employees of Wing Hang Bank would continue to enjoy the same rights following the transfer as before under their respective pension schemes. In terms of human resource policies of the two banks, it was decided that when there were two different policies for the employees, the better one would be taken for the combined bank. As regards some members' concern about possible redundancies following the merger, Wing Hang Bank advised that while there would be a few redundancies after the merger, there would be net increase in posts by the end of 2004 as a result of the expansion in scope of business. Affected staff of closed bank branches would be re-deployed to newly opened branches to avoid redundancies.

13. On staff consultation, members noted that staff had been informed of the relevant arrangements and they were by and large supportive of the new policies which provided better benefits. A member requested the merging entities to provide information on the outcome of consultation and redeployment plans for affected staff. The information provided by the merging entities after the meeting was issued vide LC Paper No. CB(1)1299/03-04(01) on 16 March 2004. Members may refer to minutes of the meeting (LC Paper No. CB(1)1630/03-04) for details.

Conclusion

14. 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

Prepared by

Kitty Cheng
Assistant Legal Adviser
Legislative Council Secretariat
7 June 2004

WING HANG BANK, LIMITED (MERGER) BILL

COMMITTEE STAGE

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

<u>Clause</u>	<u>Amendment Proposed</u>
16	Subclause (1)(a) is amended by deleting the words “, 119E(2) or 119H(1)(a)”.