

## LEGISLATIVE COUNCIL BRIEF

### CITIBANK (HONG KONG) LIMITED (MERCER) BILL

#### Introduction

1. The Chief Executive granted his consent for Citibank (Hong Kong) Limited (Merger) Bill (the **Bill**) to be introduced before the Legislative Council on 29 March 2005. This Bill is introduced under Article 74 of the Basic Law by Legislative Council member, Hon. Dr. David Li Kwok-po, GBS, JP. The Financial Affairs Panel of the Legislative Council was consulted regarding the Bill on 1 November 2004, and Members supported the general objectives of the Bill.

#### Background and Purpose

2. The Bill provides for the transfer of the activities, assets and liabilities which constitute the retail banking business of Citibank N.A. (**Citibank**) located in Hong Kong, currently operated through a branch in Hong Kong (**Citibank, Hong Kong Branch**), to a wholly owned subsidiary within the Citibank group of companies. The subsidiary, Citibank (Hong Kong) Limited (**Citibank (Hong Kong)**), has been incorporated in Hong Kong and is currently a bank authorized under the Banking Ordinance as restricted licence bank. Citibank (Hong Kong) applied to the Hong Kong Monetary Authority for a full bank licence and that application was approved on 28 October 2004. Citibank (Hong Kong) is a wholly owned subsidiary of Citibank and is a member of the Citibank group of companies of which Citigroup Inc. is the ultimate holding company.
3. Bank mergers or major reorganisations in Hong Kong are typically effected either by transfer of relevant property and liabilities by way of novation or assignment or by introducing a Bill to the Legislative Council which transfers relevant property and liabilities of the merging bank which are governed by Hong Kong law. Given the large number of agreements between Citibank, Hong Kong Branch and its customers and other counterparties, it will not be feasible to transfer such property and liabilities by way of novation and assignment to Citibank (Hong Kong). As such, a statutory Merger as provided by the Bill will be a preferred option.
4. Citibank has been operating in Hong Kong for more than 100 years. The retail banking group offers a complete range of world-class financial products and services to customers in 30 locations in the territory. The decision to incorporate its retail banking business in a Hong Kong subsidiary comes as part of Citibank's strategy to grow its international businesses and the incorporation reaffirms the bank's long-term commitment to Hong Kong, its customers, employees and business partners.
5. The Bill has advantages for the customers of Citibank, Hong Kong Branch who will have the reassurance that all Hong Kong law governed property and liabilities have been properly transferred to Citibank (Hong Kong). Such customers will also avoid the inconvenience of having to execute new customer documentation. Further, the basis of the transfer of such property and liabilities from Citibank, Hong Kong Branch to Citibank (Hong Kong) will be publicly known. After the transfer, Citibank, Hong Kong Branch will consist mainly of private banking business and commercial banking business which will continue to be carried on in the same manner as before.
6. Since the early 1980s the Legislative Council has passed a number of ordinances implementing reorganisations and mergers of banks and other authorized institutions. The Bill is based on the form of those bank merger ordinances which were considered to be most analogous to the proposed

Citibank reorganisation. Differences from analogous prior Ordinances are matters of technical drafting, reflecting the particular circumstances of this bank merger.

## The Bill

7. The purpose of the Bill is to transfer the Hong Kong retail banking business of Citibank currently operated through Citibank, Hong Kong Branch to Citibank (Hong Kong). Citibank is a national banking association organized under the laws of the United States and is authorized under the Banking Ordinance to carry out the business of banking in Hong Kong. Citibank (Hong Kong) is a wholly owned subsidiary of Citibank incorporated in Hong Kong and authorized under the Banking Ordinance.
8. The Bill provides for the vesting of the retail banking business of Citibank which is governed by or subject to Hong Kong law in Citibank (Hong Kong) on the appointed day with the exception of a limited range of excluded property and liabilities as explained in 10(a) below. The appointed day will be decided in consultation with the Hong Kong Monetary Authority.
9. The key provisions of the proposed Bill are similar to those of 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 and liabilities". A limited range of property and liabilities is specifically excluded. The Bill does not provide a right for Citibank (Hong Kong) to amend these classes of property and liabilities. Paragraphs (a) to (c) correspond to exclusions in previous bank merger bills. Paragraph (d) excludes the activities of Citibank, Hong Kong Branch which relate in whole or in part to the corporate banking business, the private banking business, or any other business of Citibank, Hong Kong Branch other than the retail banking business. It is necessary to include this exclusion in order to ensure that only activities relating to the retail banking business of Citibank, Hong Kong Branch pass to Citibank (Hong Kong) under the Bill.
  - (b) **Clause 3** provides that the board of directors of Citibank (Hong Kong) may determine an appointed day upon which the merger will take effect and that such appointed day must be notified by both Citibank (Hong Kong) and Citibank, Hong Kong Branch in the Gazette.
  - (c) **Clause 4** is the main transfer and vesting provision in the Bill. It provides that the undertakings of Citibank, Hong Kong Branch (not including the "excluded property and liabilities") shall transfer to and vest in Citibank (Hong Kong) on the appointed day as if Citibank (Hong Kong) were the same person in law as Citibank, Hong Kong Branch. The clause also provides that where the transfer and vesting of property and liabilities is governed otherwise than by the laws of Hong Kong, Citibank, Hong Kong Branch shall, if required by Citibank (Hong Kong) take all necessary steps to secure the effective transfer and vesting of such property and liabilities in Citibank (Hong Kong) as soon as practicable after the appointed day. We do not foresee any material problems in doing so as such property and liabilities are largely supply contracts or within our control.
  - (d) **Clause 5** deals with property which, before the merger, is held by Citibank, Hong Kong Branch in a capacity as a trustee. It provides that in such case, the relevant document should be read as if references to Citibank, Hong Kong Branch were references to Citibank (Hong Kong).
  - (e) **Clause 6(a) to (k)** provide that all contracts and agreements made with, given to or by or addressed to Citibank, Hong Kong Branch and insurance policies in which Citibank, Hong Kong Branch has an interest) shall, after the merger takes effect, be construed as if Citibank

(Hong Kong) had been the original party instead of Citibank, Hong Kong Branch (or Citibank) and, accordingly, all references to Citibank, Hong Kong Branch (or Citibank) must be construed as if they were to Citibank (Hong Kong). **Clauses 6(a) to (k)** also provide for accounts, negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgements to be transferred to Citibank (Hong Kong) upon the appointed day. **Clauses 6(g)(v) and (vi)** are provisions which seek to reflect the 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.

- (f) **Clause 6(l)** provides that the transfer of personal data from Citibank, Hong Kong Branch to Citibank (Hong Kong) 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 Citibank (Hong Kong) any power which he could, before the merger, have exercised in respect of Citibank, Hong Kong Branch.
- (g) **Clause 7** provides for the accounting treatment of Citibank (Hong Kong) following the merger. However unlike the case in some recently enacted merger ordinances, the Bill does not seek the backdating of accounting treatment.
- (h) **Clause 8** provides for the taxation arrangements following the merger. It also provides that for the purposes of the Inland Revenue Ordinance, Citibank (Hong Kong) shall be treated as if it were the same person in law with regard to the undertakings as Citibank, Hong Kong Branch on and from the appointed day and any profits and losses arising from the undertakings of Citibank, Hong Kong Branch transferred to Citibank (Hong Kong) on or after the appointed day shall be treated as profits and losses of Citibank (Hong Kong). **Clause 8** 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.
- (i) **Clause 9** provides that any provision contained in any contract or other document to which Citibank, Hong Kong Branch or Citibank (Hong Kong) or any of their respective subsidiaries is a party which prohibits or has the effect of prohibiting the merger or under which an event of default or a termination event occurs as a result of the merger shall be deemed to have been waived by the Bill, once it is enacted and comes into effect.
- (j) **Clauses 10 to 12** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against Citibank, Hong Kong Branch which, when transferred by the Bill (once it is enacted and comes into effect), becomes admissible in evidence after the merger in respect of the same matter for or against Citibank (Hong Kong). **Clause 11** provides that, for the purposes of the Evidence Ordinance, banker's records of Citibank, Hong Kong Branch vested in Citibank (Hong Kong) by the Bill shall be treated as if these were always banker's records of Citibank (Hong Kong).
- (k) **Clause 13** deals with the effect of the merger on interests in land in Hong Kong held by Citibank, Hong Kong Branch and provides that the vesting of the Citibank, Hong Kong Branch's interests in land in Citibank (Hong Kong) pursuant to the merger does not constitute an acquisition, assignment, transfer or parting with possession under the Landlord and Tenant (Consolidation) Ordinance. **Clause 13** also provides that the vesting in Citibank (Hong Kong) of Citibank, Hong Kong Branch'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 13** exempts either Citibank (Hong Kong) or Citibank, Hong Kong Branch from the provisions of the Stamp Duty Ordinance.

- (l) **Clause 14** states that nothing in the Bill shall exempt Citibank, Hong Kong Branch or Citibank (Hong Kong) from any of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.
- (m) **Clause 15** provides that the Bill does not prevent Citibank (Hong Kong) from amending its memorandum and articles of association or dealing with its property or business generally. **Clause 15** also provides that nothing in the Bill prevents Citibank from altering its memorandum and articles of association or dealing with its property generally before the appointed day.
- (n) **Clause 16** provides that nothing in the Bill (once it is enacted and comes into effect) shall affect the rights of the Central Authorities or the Government under the Basic Law and other laws.

### **Taxation**

- 10. As mentioned above, Clauses 6, 7 and 8 have the effect of deeming Citibank (Hong Kong) as one and the same as Citibank, Hong Kong Branch in law in so far as the undertakings are concerned, and allowing any profits and losses of Citibank, Hong Kong Branch arising from the undertakings to be treated as the profits and losses of Citibank (Hong Kong) from the appointed day under the Bill.

### **Employees**

- 11. The Bill does not operate to transfer any employees because all relevant employees are already employed by Citibank (Hong Kong).

### **Consultation**

- 12. 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 the Inland Revenue, the Companies Registrar, the Land Registrar, the Home Affairs Bureau, the Mandatory Provident Fund Schemes Authority and the Privacy Commissioner for Personal Data 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 November 2004, Citibank sent an information paper to the members of the Financial Affairs Panel explaining the reasons for the transfer of the activities, assets and liabilities which constitute the retail banking business of Citibank, Hong Kong Branch to Citibank (Hong Kong) and the impact of the transfer, particularly with regard to the impact of the transfer of liabilities on the existing customers of Citibank, Hong Kong Branch and the protection of customers' interests after the transfer. The information paper also confirms that Citibank has conducted similar transfers of its retail banking businesses in other countries around the world, that existing customers of Citibank, Hong Kong Branch are aware of the merger and no concerns have been raised, and that existing staff members of Citibank, Hong Kong Branch have been consulted on the transfer and have affirmatively consented to the transfer of their employment. Arrangements to answer questions from customers will be made as part of the merger notification exercise.

### **Legislative Timetable**

- 13. The legislative timetable is as follows:

Financial Affairs Panel

1 November 2004

Publication in the Gazette for the first time	11 March 2005
Publication in the Gazette for the second time	18 March 2005
First Reading and adjournment of Second Reading debate	6 April 2005

### **Publicity**

14. The Bill was published in the Gazette on 11 March 2005 and 18 March 2005 and notice of the Bill has been given by way of advertisements in South China Morning Post and Economic Times on 11 March 2005 and 18 March 2005. In addition, a further press release will be issued by Citibank upon completion of the legislative process.

### **Enquiries**

15. Any enquiries about this brief can be directed to Mr. Andrew Burns at the Office of Legislative Councillor, Hon. Dr. David Li Kwok-po, GBS, JP at telephone number 2842 3449 or fax number 2526 1909.

**Hon. Dr. David Li Kwok-po, GBS, JP**

**1 April 2005**