

立法會
Legislative Council

LC Paper No. CB(1)1189/15-16
(These minutes have been seen
by the Administration and the Bank of
Communications Co., Ltd. Hong Kong
Branch)

Ref: CB1/BC/9/15/2

**Bills Committee on
Bank of Communications (Hong Kong) Limited (Merger) Bill**

**Minutes of first meeting
held on Monday, 4 July 2016, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon SIN Chung-kai, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon NG Leung-sing, SBS, JP
Hon Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, SBS, JP

Member attending : Dr Hon CHIANG Lai-wan, JP

**Public Officers
attending** : **For item II**

Financial Services and the Treasury Bureau

Mr Jackie LIU
Principal Assistant Secretary (Financial Services)5

Mr Henry YIM
Assistant Secretary (Financial Services)(5)2

Hong Kong Monetary Authority

Mr Raymond CHAN
Executive Director (Banking Supervision)

Mr Alan AU
Head (Banking Supervision)2

Attendance by invitation : For Item II

Bank of Communications Co., Ltd. Hong Kong Branch

Mr SHOU Fugang
Chief Executive

Mr Alan LIU
Alternate Chief Executive

Clifford Chance

Ms Virginia LEE
Partner

Ms Cherry HO
Associate

PricewaterhouseCoopers

Mr James TAM
Partner

Mr Simon CHENG
Partner

Clerk in Attendance : Ms Angel SHEK
Chief Council Secretary (1)1

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Mandy LI
Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Ms Clara LO
Legislative Assistant (1)8

Action

I. Election of Chairman

Mr James TO, the member who had the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr James TO was nominated by Mr SIN Chung-kai. Mr James TO declined the nomination. Mr SIN Chung-kai was nominated by Mr Kenneth LEUNG and the nomination was seconded by Mr Alan LEONG. Mr SIN Chung-kai accepted the nomination.

3. Mr CHAN Kam-lam was nominated by Mr Christopher CHEUNG and the nomination was seconded by Mr NG Leung-sing. Mr CHAN Kam-lam accepted the nomination.

4. As there were two nominations, Mr James TO announced a vote by secret ballot. Of the members present for voting, three members voted for Mr SIN Chung-kai and two members voted for Mr CHAN Kam-lam. Mr James TO declared that Mr SIN Chung-kai was elected as Chairman of the Bills Committee. Mr SIN Chung-kai then took over the chair.

5. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Bank of Communications Co., Ltd. Hong Kong Branch and the Administration

(LC Paper No. CB(3)267/15-16 — The Bill

Issued by Hon NG Leung-sing on — Legislative Council Brief
24 December 2015

LC Paper No. LS24/15-16 — Legal Service Division
Report

Action

LC Paper No. CB(1)1086/15-16(01) — Background brief prepared by the Legislative Council Secretariat)

Disclosure

6. Mr Kenneth LEUNG declared that he was a Senior Tax Consultant of Clifford Chance, and that he would not vote on matters relating to the Bank of Communications (Hong Kong) Limited (Merger) Bill ("the Bill") at the meetings of the Bills Committee and the Legislative Council as he might have indirect pecuniary interest relating to the Bill.

Discussion

7. Mr SHOU Fungang, Chief Executive of Bank of Communications Co., Ltd. Hong Kong Branch ("BCOM, Hong Kong Branch") and Mr NG Leung-sing briefed members on the Bill.

(Post-meeting note: The speeches delivered by Mr SHOU Fungang and Mr NG Leung-sing were tabled at the meeting, and issued vide LC Paper Nos. CB(1)1098/15-16(01) and CB(1)1098/15-16(02) on 5 July 2016).

8. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Follow-up actions to be taken by the Hong Kong Monetary Authority and the Bank of Communications Co., Ltd. Hong Kong Branch

Vesting of undertakings in Bank of Communications (Hong Kong) Limited

9. In relation to the transfer of the retail banking business and private banking business of BCOM, Hong Kong Branch to the Bank of Communications (Hong Kong) Limited ("BCOM (Hong Kong)") under the Bill, BCOM, Hong Kong Branch was requested to provide information (in table format) on the list of undertakings to be transferred and the relevant exclusions from the said transfer.

10. To facilitate members' consideration of whether and how the financial soundness of BCOM (Hong Kong) could provide sufficient protection of the interests of customers after the said transfer, BCOM, Hong Kong Branch and the Hong Kong Monetary Authority ("HKMA") were requested to provide information on:

Action

- (a) the capital base (e.g. the paid-up share capital) of BCOM (Hong Kong) and other information indicative of the financial soundness of the bank; and
- (b) the capital requirements on, and average capital adequacy ratios of, locally incorporated banks vis-à-vis Mainland incorporated banks and their branches in Hong Kong.

Operation of retail banking business by Hong Kong licenced banks

11. HKMA was requested to provide information on the number of licensed banks in Hong Kong, with breakdowns by:

- (a) banks which were incorporated in the Mainland or overseas and operated through branches in Hong Kong;
- (b) banks which were subsidiaries of banks incorporated in the Mainland or overseas, and held a full banking licence under the Banking Ordinance (Cap. 155); and
- (c) whether the banks in (a) and (b) above operated retail banking business in Hong Kong, and the scale of such operation.

(Post-meeting note: The written responses provided by HKMA and BCOM, Hong Kong Branch respectively were issued vide LC Paper Nos. CB(1)1106/15-16(02) and CB(1)1106/15-16(03) on 7 and 8 July 2016.)

III. Any other business

Date of next two meetings

12. Members agreed that the second and third meetings would be held respectively on Tuesday, 5 July 2016, at 4:30 pm and Wednesday, 6 July 2016, at 8:30 am.

(Post-meeting note: The notices of meetings were issued to members vide LC Paper No. CB(1)1099/15-16 on 4 July 2016.)

13. There being no other business, the meeting ended at 4:42 pm.

Bills Committee on Bank of Communications (Hong Kong) Limited (Merger) Bill

**Proceedings of the first meeting
on Monday, 4 July 2016, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I - Election of Chairman			
000202 – 000619	Mr James TO Mr CHAN Kam-lam Mr Alan LEONG Mr NG Leung-sing Mr Kenneth LEUNG Mr Christopher CHEUNG Mr SIN Chung-kai	Election of Chairman Disclosure of interest by Mr LEUNG	
Agenda Item II - Meeting with the Bank of Communications Co., Ltd. Hong Kong Branch and the Administration			
000620 – 000740	Chairman	Opening remarks	
000741 – 001828	The Administration Bank of Communications Co., Ltd. Hong Kong Branch ("BCOM, Hong Kong Branch") Mr NG Leung-sing	Briefing by BCOM, Hong Kong Branch and Mr NG on the Bill which was a Member's bill introduced by Mr NG (with the consent of the Chief Executive) to provide for the transfer of the retail banking business and private banking business of BCOM, Hong Kong Branch to a newly established and wholly owned subsidiary (i.e. Bank of Communications (Hong Kong) Limited ("BCOM (Hong Kong)")) within the BCOM group of companies of which BCOM was the ultimate holding company ("the proposed business transfer"). The Administration advised that it had been the Government's policy to support consolidation in the banking sector, subject to the overall aims of promoting the stability of the banking system and ensuring appropriate protection for relevant depositors. The Administration supported the Bill and considered it conducive to enhancing the quality of banking services.	
001829 – 002447	Chairman Mr James TO BCOM, Hong Kong Branch	Mr TO sought information on: (a) the capital base and financial soundness of BCOM (Hong Kong) for consideration of	

Time marker	Speaker	Subject(s)	Action required
		<p>whether and how far this newly established subsidiary could provide sufficient protection of the interests of the existing customers and employees of BCOM, Hong Kong Branch after the proposed business transfer; and</p> <p>(b) the impact of the proposed business transfer on existing employees of BCOM, Hong Kong Branch.</p> <p>BCOM, Hong Kong Branch explained the considerations for the proposed business transfer by way of a Member's Bill, and pointed out that:</p> <p>(a) the proposed business transfer was part of BCOM's strategy to expand and intensify its business, which demonstrated BCOM's commitment to its customers, employees and business partners in Hong Kong;</p> <p>(b) as BCOM (Hong Kong) would be incorporated locally and held a banking licence under the Banking Ordinance (Cap. 155) ("BO"), it would have a corporate governance structure consisting mainly of an independent board of directors, board-level committees and senior management in accordance with the regulatory requirements. This would strengthen the internal governance of the bank and enhance the transparency of its operation; and</p> <p>(c) the terms of contracts of employment of employees to be transferred to BCOM (Hong Kong) would remain the same as those of their existing contracts with BCOM, Hong Kong Branch. The employees concerned would not suffer any losses in respect of their accrued benefits.</p>	
002448 – 003116	Chairman Mr CHAN Kam-lam BCOM, Hong Kong Branch	<p>Since BCOM, Hong Kong Branch would continue to operate corporate banking services and other banking services after the transfer of its retail/private banking businesses to BCOM (Hong Kong), Mr CHAN raised concerns as to:</p> <p>(a) whether this might cause confusion to</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>existing customers of the branch and whether the two banks would operate their businesses on the same premises;</p> <p>(b) whether and how the proposed business transfer might impact on the H shares of BCOM which was listed on The Stock Exchange of Hong Kong Limited; and</p> <p>(c) how BCOM, Hong Kong Branch would ensure that its existing customers would be duly informed of the proposed business transfer.</p> <p>BCOM, Hong Kong Branch advised that:</p> <p>(a) currently, it primarily carried out its retail/private banking businesses at sub-branches situated at over 40 locations in Hong Kong. The tenancy agreements with respect to the premises were also intended to be transferred to BCOM (Hong Kong);</p> <p>(b) after the proposed business transfer, there would be a clearer and more focused separation in the servicing of different customer groups of BCOM. Both banks would be able to devise products and services of a more professional and satisfactory quality;</p> <p>(c) the proposed business transfer would serve the best interests of the businesses, shareholders and customers of BCOM. As the share prices of a listed company could be influenced by a number of factors, it would not be appropriate to speculate on the impact caused by the proposed business transfer on the share prices of BCOM; and</p> <p>(d) there would be a two-month notification period prior to the appointed day of the proposed business transfer. The bank would issue letters of notification to its existing customers as well as set up a designated hotline to answer enquiries and provide assistance to the customers as appropriate.</p>	

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003117 – 003632	Chairman Mr Christopher CHEUNG Hong Kong Monetary Authority ("HKMA")	Discussion on (a) the impact of the passage of the Financial Institutions (Resolution) Bill on BCOM, Hong Kong Branch and BCOM (Hong Kong), and (b) the financial relationship between the two banks	
003633 – 005910	Chairman Mr Kenneth LEUNG Mr James TO Mr NG Leung-sing BCOM, Hong Kong Branch HKMA	<p>Mr LEUNG sought information on:</p> <ul style="list-style-type: none"> (a) the capital base of BCOM (Hong Kong); (b) whether the years of services of existing employees of BCOM, Hong Kong Branch would be recognized after the proposed business transfer; and (c) whether there was any plan to list BCOM (Hong Kong) on The Stock Exchange of Hong Kong Limited. <p>Mr James TO considered it important for Bills Committee members to be informed of the estimated capital base of BCOM (Hong Kong) vis-à-vis BCOM, Hong Kong Branch, for ascertaining whether the former could provide sufficient protection of the interests of the existing customers of BCOM, Hong Kong Branch affected by the proposed business transfer.</p> <p>Mr NG considered that:</p> <ul style="list-style-type: none"> (a) implementing a bank merger or transfer of banking business by way of a private legislation had worked effectively in the past; (b) information on the capital base of BCOM (Hong Kong) potentially related to share-price-sensitive data of BCOM, and hence should not be disclosed; and (c) there were provisions in the Bill to ensure continuity of contracts of employment of employees to be transferred to BCOM (Hong Kong). <p>BCOM, Hong Kong Branch explained the nature, risks and capital requirements in respect of the businesses of BCOM (Hong Kong) vis-à-vis BCOM, Hong Kong Branch, and pointed out that:</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) as BCOM (Hong Kong) was a fully licensed bank under BO and subject to the direct supervision by HKMA, it needed to comply with the statutory minimum capital adequacy ratio, minimum level of share capital as well as other regulatory requirements under BO for locally incorporated banks;</p> <p>(b) information on the paid-up share capital of BCOM (Hong Kong) could not be disclosed as it potentially related to share-price-sensitive data or inside information of BCOM;</p> <p>(c) the Bill provided that all contracts of employment of BCOM, Hong Kong Branch with its employees who were solely engaged in the retail banking business and private banking business of BCOM, Hong Kong Branch shall be transferred to BCOM (Hong Kong) at the merger and deemed for all purposes to be a single continuing employment. The accrued benefits of these existing employees, including their years of services, would be fully recognized; and</p> <p>(d) BCOM currently had no plan to list BCOM (Hong Kong) on the Stock Exchange of Hong Kong.</p> <p>HKMA advised that based on the information published by the China Banking Regulatory Commission ("CBRC"), the average capital adequacy ratio ("CAR") of commercial banks in Mainland China was 13.4% as of March 2016, whereas the corresponding period's average CAR of locally-incorporated banks in Hong Kong was 18.2%, which was indicative of a relatively higher average CAR of locally incorporated banks in Hong Kong.</p> <p>At the requests of Mr TO and the Chairman, BCOM, Hong Kong Branch and HKMA agreed to provide supplementary information on (a) the capital base (e.g. the paid-up share capital) of BCOM (Hong Kong) and other information indicative of the financial soundness of the bank; and (b) the capital requirements on, and average CAR of, locally incorporated banks vis-à-vis Mainland</p>	<p>BCOM, Hong Kong Branch and HKMA to take action as paragraph 10 of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		incorporated banks and their branches in Hong Kong.	
005911 – 010515	Chairman	Suspension of meeting for five minutes to enable Bills Committee members to participate in the voting on a staffing proposal at the meeting of the Establishment Subcommittee	
010516 – 011526	Chairman Mr Kenneth LEUNG HKMA BCOM, Hong Kong Branch	<p>Mr LEUNG shared Mr TO's views that information on the capital base of BCOM (Hong Kong) should be provided to the Bills Committee for consideration of the financial soundness of BCOM (Hong Kong).</p> <p>Mr LEUNG and the Chairman enquired about:</p> <p>(a) the banking licence application in respect of BCOM (Hong Kong); and</p> <p>(b) why BCOM had not initiated to subsidiarize its retail banking business in Hong Kong earlier.</p> <p>HKMA and BCOM, Hong Kong Branch responded that:</p> <p>(a) BCOM (Hong Kong) had been granted a banking licence by the Monetary Authority ("MA") in September 2015. When considering the banking licence application, HKMA had examined the bank's business plan, and considered that it could meet the statutory minimum share capital requirement for locally incorporated banks. BCOM (Hong Kong) had to continuously observe the regulatory requirements on capital adequacy after obtaining the licence;</p> <p>(b) having regard to the secrecy provisions in BO, HKMA could not disclose information obtained from BCOM for processing the banking licence of BCOM (Hong Kong); and</p> <p>(c) the proposed business transfer was part of BCOM's strategy to expand and intensify its business, and was in line with the rising trend for international financial institutions to transfer their retail banking businesses to locally-incorporated subsidiaries.</p>	

Time marker	Speaker	Subject(s)	Action required
011527 – 012622	Chairman Mr James TO HKMA Mr Kenneth LEUNG	<p>Discussion on HKMA's supervisory policy on non-locally incorporated banks conducting retail banking business in Hong Kong, and the benefits arising from subsidiarization of retail banking businesses by non-locally incorporated banks</p> <p>HKMA advised that:</p> <p>(a) its supervisory policy was that, for a non-locally incorporated bank with sizeable retail banking business in Hong Kong, such business should be operated in the form of a locally-incorporated bank rather than a branch. Locally-incorporated banks were required to observe HKMA's requirements on corporate governance, capital adequacy, large exposure limits and connected lending limits, which enabled HKMA to more effectively carry out its duty to protect depositors;</p> <p>(b) non-locally incorporated banks would take into account, among other factors, the nature and scale of their banking businesses in Hong Kong, when considering whether and when to take forward subsidiarization. In this connection, HKMA exercised flexibility of its supervisory policy as appropriate having regard to the unique circumstances of individual banks; and</p> <p>(c) at present, there were 156 banks which had been granted a banking licence by MA to carry out banking business in Hong Kong, of which 22 were locally-incorporated banks. Among the remaining banks, BCOM was currently the only licensed bank conducting sizeable retail banking business in the form of a branch. In accordance with its supervisory policy, HKMA supported the proposed business transfer.</p> <p>As requested by the Chairman and Mr LEUNG, HKMA agreed to provide supplementary information on the operation of retail banking businesses by non-locally incorporated banks operating through branches in Hong Kong.</p>	<p>HKMA to take action as paragraph 11 of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
012623 – 013713	Chairman Mr Kenneth LEUNG Mr James TO BCOM, Hong Kong Branch	<p>Mr LEUNG, Mr TO and the Chairman raised concerns about (a) the protection of personal data to be transferred from BCOM, Hong Kong Branch to BCOM (Hong Kong); (b) how BCOM, Hong Kong Branch would deal with requests from existing customers for retaining their accounts with the branch; and (c) the protection of the interests of existing holders of dormant accounts.</p> <p>BCOM, Hong Kong Branch responded that:</p> <p>(a) the transfer shall not result in a breach of any duty of confidentiality or a contravention of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles. BCOM, Hong Kong Branch had consulted the relevant government departments and the Privacy Commissioner for Personal Data on the provision and related arrangements, and they had not raised any issues of concerns;</p> <p>(b) the bank would contact the holders of dormant accounts (i.e. accounts which did not have any transactions within 24 months as defined by BCOM (Hong Kong) of the retail/private banking business of the branch. BCOM (Hong Kong) would also maintain a matching escrow account of the same amount in these dormant accounts with BCOM, Hong Kong Branch when these accounts were transferred to BCOM (Hong Kong); and</p> <p>(c) if certain existing customers requested to retain their accounts by BCOM, Hong Kong Branch, the bank would consider whether it was appropriate to retain those accounts on a case-by-case basis, having regard to the scope of the proposed business transfer.</p>	
013714 – 014525	Chairman Mr James TO Clifford Chance	<p>Mr TO sought clarification on the scope of banking businesses to be transferred from BCOM, Hong Kong Branch to BCOM (Hong Kong).</p> <p>Clifford Chance, the legal adviser to BCOM, Hong Kong Branch, explained that:</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) only those property, reserves and liabilities of BCOM, Hong Kong Branch which related in whole to private banking business, or in whole to retail banking business, or in whole to the retail banking business and private banking business, would be transferred; and</p> <p>(b) the tenancy agreements with respect to the premises that had been leased by BCOM, Hong Kong Branch to operate sub-branches were also intended to be transferred to BCOM (Hong Kong) under the Bill.</p> <p>At the request of Mr TO, BCOM, Hong Kong Branch agreed to provide supplementary information for members' reference of the property, reserves and liabilities to be transferred to BCOM (Hong Kong), and the type of banking services that belonged to the retail/private banking businesses to be transferred.</p>	<p>BCOM, Hong Kong Branch to take action as paragraph 9 of the minutes</p>
014526 – 014731	<p>Chairman Mr James TO Clifford Chance</p>	<p>In response to the enquiries of the Chairman and Mr TO, Clifford Chance explained that "insurance policies" under Clause 6(a) of the Bill referred to those taken out by BCOM, Hong Kong Branch with third party insurer, e.g. policy for the operation of sub-branch premises, etc.</p>	
014732 – 015650	<p>Chairman Dr CHIANG Lai-wan HKMA BCOM, Hong Kong Branch</p>	<p>Dr CHIANG enquired about:</p> <p>(a) whether the proposed merger was initiated by the bank in response to the request of HKMA;</p> <p>(b) the difference of HKMA's supervisory policy on a locally-incorporated bank vis-à-vis a branch of non-locally incorporated bank; and</p> <p>(c) whether HKMA would encourage more non-locally incorporated banks to operate through locally-incorporated subsidiaries in Hong Kong.</p> <p>HKMA advised that:</p> <p>(a) it had requested BCOM to subsidiarize its</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>retail banking business in Hong Kong and BCOM agreed to take forward the subsidiarization;</p> <p>(b) non-locally incorporated banks would need to take into account the nature and scale of their banking businesses in Hong Kong when considering whether and when to take forward subsidiarization, as some banks might prefer to operate their corporate banking business through branches rather than locally-incorporated subsidiaries; and</p> <p>(c) locally incorporated banks were required to observe HKMA's requirements in relation to, among others, corporate governance; whereas the branch of a non-locally incorporated bank like BCOM, Hong Kong Branch was under the direct supervision of CBRC (i.e. the banking regulator at the place of incorporation of BCOM), whose supervisory policy followed international practices where applicable.</p>	
015651 – 020500	Chairman Mr James TO BCOM, Hong Kong Branch	<p>Mr TO enquired about:</p> <p>(a) whether stock accounts held at BCOM, Hong Kong Branch would be included in the proposed business transfer; and</p> <p>(b) whether the two-month notification period for informing customers affected by the proposed transfer was adequate, and how BCOM, Hong Kong Branch would ensure that customers residing outside Hong Kong would be duly informed of the transfer.</p> <p>BCOM, Hong Kong Branch responded that:</p> <p>(a) all stock accounts belonging to existing customers of retail/private banking business of BCOM, Hong Kong Branch would be transferred to BCOM (Hong Kong); and</p> <p>(b) BCOM, Hong Kong Branch would contact dormant account holders and account holders residing outside Hong Kong if they did not respond to the bank within the two-month notification period.</p>	

Time marker	Speaker	Subject(s)	Action required
		To allow sufficient time for discussion, the Chairman directed that the meeting be extended for 15 minutes.	
Agenda Item III — Any other business			
020501 – 021326	Chairman Mr James TO	<p>Mr TO expressed concern on the potential difficulties in classifying the job duties of the supporting staff of BCOM, Hong Kong Branch into retail, private, corporate and other banking businesses in making staff transfer arrangements, and considered that affected staff should be informed of the arrangements as early as possible.</p> <p>BCOM, Hong Kong Branch was requested to respond to Mr TO's concerns at the next meeting.</p> <p>Date of next two meetings</p>	