

立法會
Legislative Council

LC Paper No. CB(1)1191/15-16
(These minutes have been seen
by the Administration and 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 second meeting
held on Tuesday, 5 July 2016, at 4:30 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

Public Officers attending : 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 : 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 Philip MAK
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

Action

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

Matters arising from previous meeting

(LC Paper No. CB(1)1106/15-16(01) — List of follow-up actions arising from the meeting on 4 July 2016

Action

LC Paper No. CB(1)1106/15-16(02) — Hong Kong Monetary Authority's response to the issues raised at the meeting on 4 July 2016

LC Paper No. CB(1)1106/15-16(03) — Bank of Communications Co., Ltd. Hong Kong Branch's response to the issues raised at the meeting on 4 July 2016)

Clause-by-clause examination of the Bill

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

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

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

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

Disclosure

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") as he might have indirect pecuniary interest in the Bill.

Discussion

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

3. Members noted a paper tabled at the meeting and provided by the Bank of Communications Co., Ltd. Hong Kong Branch ("BCOM, Hong Kong Branch") in response to issues arising from the last meeting, which contained information on the paid-up share capital of the Bank of Communications (Hong Kong) Limited and potentially related to share-price-sensitive data or inside information of BCOM. At the request of BCOM, Hong Kong Branch, the paper was restricted to Bills Committee members only. As agreed at the meeting, BCOM, Hong Kong Branch would provide a redacted version of the paper in due course for uploading to the website of the Legislative Council.

Action

(Post-meeting note: A redacted version of the paper provided by BCOM, Hong Kong Branch was issued vide LC Paper No. CB(1)1106/15-16(03) on 7 July 2016 (English version) and 8 July 2016 (Chinese version).)

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

Operation of retail banking business by non-locally incorporated banks in Hong Kong

4. Further to the information provided by the Hong Kong Monetary Authority ("HKMA") concerning its supervisory policy on non-locally incorporated banks conducting retail banking business in Hong Kong (LC Paper No. CB(1)1106/15-16(02)), HKMA was requested to provide supplementary information on the scale of retail banking business (e.g. number of sub-branches) operated by these banks in the form of a branch in Hong Kong.

Property and liabilities to be transferred to Bank of Communications (Hong Kong) Limited under the Bill

5. BCOM, Hong Kong Branch was requested to:

- (a) consider moving Committee Stage amendments ("CSAs") to set out what "any other businesses" in the proposed definition of "excluded property and liabilities" under the Bill referred to specifically, with a view to enhancing the clarity of the definition;
- (b) consider specifying, through moving CSAs to the Bill or giving of an undertaking by the Member in charge of the Bill at the resumption of the Bill's Second Reading debate, the circumstances under which BCOM could (or could not) exercise its power to designate, by a resolution or resolutions of its board of directors, certain property and liabilities of the retail or private banking business of BCOM, Hong Kong Branch to be excluded from the transfer of the relevant undertakings under the Bill;
- (c) explain the meaning of "reserves" ("儲備金") in the proposed definitions of "excluded property and liabilities" and "undertakings" under the Bill; and review whether it was necessary to include "reserves" in the said definitions (or other parts of the Bill as appropriate) in the light of the proposed definition of "property"; and

Action

- (d) review whether "insurance agent within the meaning of the Insurance Companies Ordinance (Cap. 41)" under the definitions of "corporate banking business", "private banking business" and "retail banking business" was the intended meaning of insurance agent in relation to the Bill, taking into account the amendments to the said Ordinance after enactment of the Insurance Companies (Amendment) Ordinance 2015.

(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(05) and CB(1)1106/15-16(06) on 7 July 2016 and 8 July 2016.)

II. Any other business

Reporting to the House Committee

6. The Chairman said that as it was likely that the Bills Committee would complete clause-by-clause examination of the Bill at next meeting on 6 July 2016, it would report its deliberations to the House Committee on 8 July 2016. Members did not raise any objection.

Date of next meeting

7. The Chairman reminded members that the next meeting would be held on Wednesday, 6 July 2016, at 8:30 am.

8. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
30 August 2016

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

**Proceedings of the second meeting
on Tuesday, 5 July 2016, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I - Meeting with the Bank of Communications Co., Ltd. Hong Kong Branch and the Administration			
000334 – 000445	Chairman	The Chairman drew members' attention that the Bank of Communications Co., Ltd. Hong Kong Branch ("BCOM, Hong Kong Branch") provided information on the paid-up share capital of the Bank of Communications (Hong Kong) Limited ("BCOM (Hong Kong)") via a paper tabled at the meeting. As requested by BCOM, Hong Kong Branch, the paper was restricted to Bills Committee members only as it potentially related to share-price-sensitive data or inside information of BCOM.	
000446 – 002003	Chairman Hong Kong Monetary Authority ("HKMA") Mr James TO	<p>In relation to HKMA's written response to the issues raised at the meeting on 4 July 2016 [LC Paper No. CB(1)1106/15-16(02)], the Chairman and Mr TO sought information on:</p> <p>(a) the statutory minimum capital adequacy ratio ("CAR") for locally-incorporated authorized institutions and minimum level of share capital required for licensed banks;</p> <p>(b) why HKMA had not requested BCOM to subsidiarize its retail banking business in Hong Kong earlier; and</p> <p>(c) the scale of the retail banking business operated by non-locally incorporated banks in the form of a branch in Hong Kong.</p> <p>HKMA pointed out that:</p> <p>(a) the statutory minimum CAR for locally-incorporated authorized institutions and minimum level of share capital required for licensed banks were 8% and \$300 million respectively. The CARs of locally-incorporated banks usually</p>	

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		<p>exceeded the statutory minimum level due to the need to meet other regulatory requirements under the Banking Ordinance (Cap. 155), and commercial considerations such as enhancing customers' confidence in the banks;</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) currently, there were 134 licensed banks in Hong Kong which were non-locally incorporated and operated in the form of a branch. Except for BCOM, none of these banks conducted sizeable retail banking business in Hong Kong.</p> <p>As requested by the Chairman, HKMA agreed to provide supplementary information on the numbers of local sub-branches of the licensed banks that carried out small scale of retail banking business in Hong Kong.</p>	<p>HKMA to take action as paragraph 4 of the minutes</p>
<p>002004 – 003900</p>	<p>Chairman Mr James TO BCOM, Hong Kong Branch HKMA Mr CHAN Kam-lam Mr Christopher CHEUNG Mr NG Leung-sing</p>	<p>Mr TO suggested and BCOM, Hong Kong Branch agreed that it would provide a redacted version of its paper tabled at the meeting for uploading to the website of the Legislative Council.</p> <p>Discussion on the capital base and CAR of BCOM (Hong Kong)</p> <p>HKMA advised that when considering the banking licence application in respect of BCOM (Hong Kong), HKMA had examined the bank's business plan, and considered that it could meet the statutory minimum CAR and share capital requirement for locally-incorporated banks. BCOM (Hong Kong) had to continuously observe the capital adequacy requirements after obtaining the banking licence.</p>	

Time marker	Speaker	Subject(s)	Action required
003901 – 011320	Chairman Mr James TO Clifford Chance BCOM, Hong Kong Branch Mr NG Leung-sing Mr Christopher CHEUNG	<p>In relation to the proposed definition of "excluded property and liabilities" under Clause 2 of the Bill, Mr TO suggested that the Bill should set out specifically what "any other businesses" were in the definition, with a view to enhancing the clarity of the definition and hence protection of customers' interests.</p> <p>Mr TO queried whether it was appropriate to confer power on BCOM to specify, on or before the appointed day of the proposed business transfer, certain property and liabilities of the retail or private banking business of BCOM, Hong Kong Branch to be excluded from transfer, as proposed under the Bill. He considered that such power to designate exclusions would undermine the certainty of whether certain customers/accounts would be transferred to BCOM (Hong Kong).</p> <p>BCOM, Hong Kong Branch and Clifford Chance (legal adviser to the bank) explained that:</p> <p>(a) customers were classified into retail, private, corporate or institutional customers when they opened accounts with the bank, which would form a basis for determining which customer accounts should be transferred under the Bill. Customers concerned would also be informed of the transfer of their accounts via a notification letter to be issued by the bank;</p> <p>(b) the bank would make reference to, among other things, its books and records, to determine whether certain businesses were part of the bank's retail or private banking business, etc. The bank was clear as to the scope and coverage of its retail or private banking business so the proposed definition of "excluded property and liabilities" would be operative in the context of the Bill; and</p> <p>(c) BCOM would exercise the power to designate exclusions only in very limited</p>	

Time marker	Speaker	Subject(s)	Action required
		cases, some examples of which were given in the last paragraph of its written response (LC Paper No. CB(1)1106/15-16(03)).	
011321 – 011553	Chairman Mr Alan LEONG Assistant Legal Adviser 8 ("ALA") Clifford Chance	In reply to Mr LEONG, ALA and Clifford Chance affirmed that the Bill contained saving provisions to ensure that nothing in the Bill would affect the legal rights of the existing customers and other relevant stakeholders of BCOM, Hong Kong Branch under the existing enactments or contract law.	
011554 – 012909	Chairman Mr James TO Mr Kenneth LEUNG Clifford Chance	<p>Disclosure of interest by Mr LEUNG</p> <p>In reply to Mr TO and Mr LEUNG, Clifford Chance advised that:</p> <p>(a) BCOM, Hong Kong Branch had been conducting due diligence review of its contracts and other instruments on an ongoing basis to determine which of these contracts or instruments would be transferred to BCOM (Hong Kong) pursuant to the Bill and whether any additional step would be required to be taken to ensure an effective transfer of such contracts/instruments to BCOM (Hong Kong); and</p> <p>(b) where any property and liabilities of BCOM, Hong Kong Branch could not be transferred to BCOM (Hong Kong) as a result of them being governed by foreign laws, Clause 4(2) of the Bill provided that BCOM, Hong Kong Branch would take all necessary steps for securing the effective transfer and vesting of those property and liabilities in BCOM (Hong Kong), and, pending such transfer and vesting, would hold any of those property and liabilities in trust absolutely for BCOM (Hong Kong) from the appointed day until the transfer and vesting was completed.</p> <p>Mr TO suggested that BCOM, Hong Kong Branch might consider:</p> <p>(a) moving Committee Stage amendments</p>	BCOM, Hong Kong Branch to take action as paragraph 5(a) and

Time marker	Speaker	Subject(s)	Action required
		<p>("CSAs") to set out specifically what were "any other businesses" in the proposed definition of "excluded property and liabilities" under the Bill; and</p> <p>(b) specifying, through moving CSAs to the Bill or giving of an undertaking by the Member in charge of the Bill at the resumption of Second Reading debate of the Bill, the circumstances under which BCOM could or could not exercise the power to designate exclusions from the proposed business transfer.</p>	(b) of the minutes
<p>Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)267/15-16)]</p>			
012910 – 013445	<p>Chairman Mr James TO ALA Clifford Chance</p>	<p><u>Clause 1 — Short title</u></p> <p><u>Clause 2 — Interpretation</u></p> <p>Discussion on drafting issues relating to the proposed definition of "corporate banking business"</p> <p>At the request of the Chairman and Mr TO, BCOM, Hong Kong Branch agreed to review whether "insurance agent within the meaning of the Insurance Companies Ordinance (Cap. 41)" used in certain definitions under the Bill was the intended meaning of insurance agent in relation to the Bill, taking into account the amendments to the said Ordinance after enactment of the Insurance Companies (Amendment) Ordinance 2015.</p>	<p>BCOM, Hong Kong Branch to take action as paragraph 5(d) of the minutes</p>
013446 – 015146	<p>Chairman Mr James TO PricewaterhouseCoopers Clifford Chance Mr Kenneth LEUNG HKMA</p>	<p><u>Clause 2 — Interpretation</u></p> <p>Discussion on the meaning of "reserves" ("儲備金") in the proposed definitions of "excluded property and liabilities" and "undertakings" under the Bill</p> <p>At the request of Mr TO, BCOM, Hong Kong Branch agreed to provide supplementary information to explain the meaning of "reserves" in the proposed definitions of "excluded property and liabilities" and "undertakings" under the Bill; and whether it was necessary to include "reserves" in the said definitions (or other</p>	<p>BCOM, Hong Kong Branch to take action as paragraph 5(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		parts of the Bill as appropriate) in the light of the proposed definition of "property".	
015147 – 015511	Chairman Mr James TO Clifford Chance ALA	<p><u>Clause 3 — Notice of appointed day</u></p> <p>Mr TO noted that the directors of BCOM (Hong Kong) might appoint a day to be the appointed day for effecting the Bill. He enquired whether the provision might amount to requiring the consent of all the directors in question on the matter.</p> <p>Clifford Chance clarified that "the directors" in the provision should refer to the board of directors.</p> <p>ALA advised that under the common law, a company could only act through directors, and "the directors" in the present context usually referred to the board of directors, and this provision should be taken as referring to the decision of the board of directors regarding the appointed day.</p>	
015512 – 015730	Chairman	<p><u>Clause 4 — Vesting of undertakings in Bank of Communications (Hong Kong)</u></p> <p><u>Clause 5 — Trust property and wills</u></p> <p>Members raised no queries.</p>	
015731 – 020043	Chairman Clifford Chance	<p><u>Clause 6 — Supplementary provisions</u></p> <p>In reply to the Chairman, Clifford Chance advised that BCOM, Hong Kong Branch acted as an insurance agent but not an insurer. Certain insurance products it acted as an insurance agent for were those offered by an insurance company which was a subsidiary of BCOM.</p>	
Agenda Item II — Any other business			
020044 – 020237	Chairman	Date of next meeting	