

立法會
Legislative Council

LC Paper No. CB(1)1192/15-16
(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 third meeting
held on Wednesday, 6 July 2016, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon SIN Chung-kai, SBS, JP (Chairman)
Hon CHAN Kam-lam, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon NG Leung-sing, SBS, JP
- Members absent** : Hon James TO Kun-sun
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(04) — List of follow-up actions arising from the meeting on 5 July 2016

LC Paper No. CB(1)1106/15-16(05) — Hong Kong Monetary Authority's response to the issues raised at the meeting on 5 July 2016

LC Paper No. CB(1)1106/15-16(06) — Bank of Communications Co., Ltd. Hong Kong Branch's response to the issues raised at the meeting on 5 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)

Discussion

The Bills Committee deliberated (index of proceedings attached at the **Annex**) and completed clause-by-clause examination of the Bank of Communications (Hong Kong) Limited (Merger) Bill ("the Bill").

Follow-up actions to be taken by the Hong Kong Monetary Authority

2. Arising from the discussion at the meeting, the Hong Kong Monetary Authority ("HKMA") was requested to provide supplementary information on the timing of introducing its supervisory policy under which non-locally

Action

incorporated banks conducting sizeable retail banking business in Hong Kong should operate in the form of a locally-incorporated bank (instead of a branch).

(Post-meeting note: The written response provided by HKMA was issued vide LC Paper No. CB(1)1115/15-16(01) on 8 July 2016.)

II. Any other business

Legislative timetable and way forward

3. Members considered and agreed to Mr NG Leung-sing's proposal to resume the Second Reading debate on the Bill at the Council meeting of 13 July 2016. In this connection, members agreed that the Bills Committee would make a recommendation to seek the President's permission under Rules 54(5) and 57(2) of the Rules of Procedure to dispense with the notices in respect of (a) resumption of Second Reading debate on the Bill on 13 July 2016; and (b) moving Committee Stage amendments ("CSAs") to the Bill. Subject to the President's permission to dispense with the aforesaid notices, the Bills Committee would also recommend that the deadline for giving the aforesaid notices be waived till 12:00 noon on 9 July 2016.

(Post-meeting note: The President had subsequently given permission, vide LC Paper No. CB(3)801/15-16 on 8 July 2016, for (a) dispensing with the notice requirement under Rule 54(5) of the Rules of Procedure so that the resumption of Second Reading debate on the Bill could take place at the Council meeting of 13 July 2016; and (b) the notice of CSAs (if any) to the Bill to be given by 12:00 noon, 9 July 2016.)

4. Members noted that the Chairman would report the deliberations of the Bills Committee to the House Committee on 8 July 2016.

5. There being no other business, the meeting ended at 9:10 am.

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

**Proceedings of the third meeting
on Wednesday, 6 July 2016, at 8:30 am
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			
000321 – 000432	Chairman	Opening remarks	
Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)267/15-16)]			
000433 – 000839	Chairman PricewaterhouseCoopers	<u>Clause 6 — Supplementary provisions</u> <u>Clause 7 — Accounting treatment of Bank of Communications (Hong Kong) and Bank of Communications, Hong Kong Branch</u> Discussion on the reference of "reserve" in Clause 7	
000840 – 000956	Chairman Assistant Legal Adviser 8 ("ALA") Administration	<u>Clause 8 — Taxation and revenue matters</u> In reply to ALA, the Administration advised that: <ul style="list-style-type: none"> (a) the proposed transfer of the retail banking business and private banking business of the Bank of Communications Co., Ltd. Hong Kong Branch ("BCOM, Hong Kong Branch") to the Bank of Communications (Hong Kong) Limited ("BCOM (Hong Kong)") would not adversely impact on tax revenue; and (b) for the purposes of the Inland Revenue Ordinance (Cap. 112), Clause 8 of the Bill had the effect of deeming BCOM (Hong Kong) as one and the same as BCOM, Hong Kong Branch, with regard to the relevant retail banking business and private banking business, on and from the appointed day for effecting the Bill. 	

Time marker	Speaker	Subject(s)	Action required
000957 – 001446	Chairman BCOM, Hong Kong Branch Clifford Chance	<p><u>Clause 9 — Contracts of employment</u></p> <p>In reply to ALA, Clifford Chance (legal adviser to BCOM, Hong Kong Branch) responded that Clause 9 of 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/or private banking business of BCOM, Hong Kong Branch shall be transferred to BCOM (Hong Kong) under the Bill and that such contracts shall be deemed to be a single continuing employment. The years of service in calculating the accrued benefits of these existing employees would continue to be counted after the transfer.</p> <p><u>Clause 10 — Mandatory provident fund scheme</u></p> <p>The Chairman enquired about the arrangements for the accounts of the occupational retirement scheme of BCOM, Hong Kong Branch registered under the Occupational Retirement Schemes Ordinance (Cap. 426) ("ORSO scheme").</p> <p>BCOM, Hong Kong Branch and Clifford Chance advised that:</p> <p>(a) the occupation retirement scheme of the bank was a closed scheme, and due to turnover, the number of participating members in this scheme had been decreasing;</p> <p>(b) in anticipation of the proposed business transfer, the bank was making arrangements, including amending the trust deed to include BCOM (Hong Kong) as an employer of the staff to be transferred to BCOM (Hong Kong), which would be executed by the scheme trustee with the authorization of BCOM, Hong Kong Branch and BCOM (Hong Kong); and</p> <p>(c) the relevant employees had been informed of the proposed transfer of their ORSO scheme accounts.</p>	

Time marker	Speaker	Subject(s)	Action required
001447 – 001736	Chairman	<p><u>Clause 11 — Waiver of prohibition of merger</u></p> <p><u>Clause 12 — Evidence: books and documents</u></p> <p><u>Clause 13 — Part III of Evidence Ordinance</u></p> <p><u>Clause 14 — Evidence of transfer and vesting</u></p> <p>Members raised no queries.</p>	
001737 – 002003	Chairman Mr Alan LEONG BCOM, Hong Kong Branch	<p><u>Clause 15 — Interests in land</u></p> <p>In reply to Mr LEONG, BCOM, Hong Kong Branch advised that it would continue to operate corporate banking business and other banking business after the transfer of its retail banking business and private banking business to BCOM (Hong Kong).</p>	
002004 – 002347	Chairman Mr NG Leung-sing Clifford Chance ALA	<p><u>Clause 16 — Saving for other enactments</u></p> <p><u>Clause 17 — Saving for companies</u></p> <p><u>Clause 18 — Saving</u></p> <p>Mr NG raised concerns as to whether it was appropriate to use the same Chinese rendition "業務" for both "business" and "undertakings" under the Bill.</p> <p>Clifford Chance explained that, when drafting the Bill, reference had been made to the Citibank (Hong Kong) Limited (Merger) Ordinance, which also adopted the same Chinese rendition "業務" for "business" and "undertakings". Under the current Bill, the term "business" was usually used together with other terms, e.g. "corporate banking business" ("公司銀行業務") and "private banking business" ("私人銀行業務"), whereas the Chinese rendition "業務" was used on its own to mean "undertakings".</p> <p>ALA supplemented that "業務經營" was used as the Chinese rendition of "business" in Clause 16 of the Bill and such Chinese rendition should be understood in the context of the relevant clause of the Bill.</p>	

Time marker	Speaker	Subject(s)	Action required
		The Bills Committee completed clause-by-clause examination of the Bill.	
002348 – 003740	Chairman Clifford Chance PricewaterhouseCoopers Administration BCOM, Hong Kong Branch	<p>At the invitation of the Chairman, Clifford Chance and PricewaterhouseCoopers (financial adviser to BCOM, Hong Kong Branch) gave an initial response to the issues raised at the meeting on 5 July 2016:</p> <p>(a) the reference to "any other businesses" in the proposed definition of "excluded property and liabilities" under the Bill was appropriate and should be retained, given that BCOM, Hong Kong Branch did, in addition to retail banking business, private banking business and corporate banking business, carry on other businesses. Schedule 14 of the Banking Ordinance (Cap. 155) also made reference to "other business" being carried on by an authorized institution;</p> <p>(b) as the retail banking business and private banking business of BCOM, Hong Kong Branch were on-going and evolving, it was not possible at this stage to provide an exact indication of what property and liabilities would be excluded from the proposed business transfer. BCOM, Hong Kong Branch would exercise the power to designate exclusions only in very limited cases, e.g. items that were desirable to be excluded for the sake of clarity or for the taking of specific step(s) to individually transfer the designated contract, agreement or document;</p> <p>(c) the term "reserves" in the proposed definitions of "excluded properties" and "undertakings" under the Bill was a well-established accounting principle that, with respect to a company or a business, assets equaled liabilities plus equity. The term "reserves" was considered to be within "equity" in the above equation; and</p> <p>(d) the phrase "insurance agent within the meaning of Insurance Companies</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Ordinance (Cap. 41)" was correct based on the Insurance Companies Ordinance (Cap. 41) currently in force.</p> <p>In reply to the Chairman, the Administration, BCOM, Hong Kong Branch and Clifford Chance indicated that:</p> <p>(a) the Insurance Companies (Amendment) Ordinance 2015 ("the Amendment Ordinance") would not affect the meaning of "insurance agent" defined in the Bill as it was envisaged that the "appointed day" of the Bill would be before the relevant sections of the Amendment Ordinance concerning "licensed insurance agent" came into effect; and</p> <p>(b) subject to the passage of the Bill by the end of the Fifth Legislative Council, and various preparation and circumstances, BCOM, Hong Kong Branch intended to execute the proposed transfer in the remainder of 2016.</p> <p>At the request of the Chairman, HKMA agreed to provide information on the timing of introducing its supervisory policy that non-locally incorporated banks conducting sizeable retail banking business in Hong Kong should operate in the form of a locally-incorporated bank (instead of a branch).</p>	<p>HKMA to take action as paragraph 2 of the minutes</p>
Agenda Item III — Any other business			
003741 – 004211	Chairman Mr NG Leung-sing	Legislative timetable and way forward	