

Bank of Communications (Hong Kong) Limited (Merger) Bill

**Information Paper for Members of Bills Committee
Legislative Council of the Hong Kong Special Administrative Region**

This paper seeks to address Question 2 raised in the list of follow-up actions arising from the discussion at the Bills Committee meeting held on 5 July 2016 in relation to the Bank of Communications (Hong Kong) Limited (Merger) Bill (the "**Bill**").

2(a) – Regarding the reference to "any other businesses" in the proposed definition of "excluded property and liabilities" under the Bill

Bank of Communications Co., Ltd. Hong Kong Branch ("**Bank of Communications, Hong Kong Branch**") considers that the reference to "any other businesses" in the proposed definition of "excluded property and liabilities" under the Bill is appropriate and should be retained, given that Bank of Communications, Hong Kong Branch does, in addition to retail banking business, private banking business and corporate banking business, carry on other businesses. Schedule 14 of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) also makes reference to "other business" being carried on by an authorised institution (in paragraph 2 of such Schedule 14). As the Bill is only intended to transfer the retail banking business and private banking business of Bank of Communications, Hong Kong Branch, all other businesses of Bank of Communications, Hong Kong Branch should be excluded from the effect of the Bill. Given that Bank of Communications, Hong Kong Branch is clear as to the scope and coverage of its retail and private banking businesses, it is considered that this definition would be operative in the context of the Bill.

2(b) – Regarding subsection (e) of the proposed definition of "excluded property and liabilities" under the Bill

As the retail and private banking businesses are existing businesses of Bank of Communications, Hong Kong Branch that are on-going and evolving, it is not possible at this stage to provide an exact indication of what such property and liabilities to be excluded will comprise. At this stage, Bank of Communications, Hong Kong Branch contemplates that this list will be very limited and will likely include items that are desirable to be excluded for sake of clarity or for the taking of specific step(s) to individually transfer the designated contract, agreement or document. In the information paper for the Members of the Bills Committee dated 5 July 2016, Bank of Communications, Hong Kong Branch has indicated the current

likely categories of the limited property and liabilities of its retail and private banking businesses that may need to be designated by Bank of Communications Co., Ltd. to be excluded from the effect of the Bill. However, this list of categories may be subject to change due to the abovementioned reason. The list of excluded property and liabilities to be designated under this subsection (e) will be determined and finalized at a time closer to the appointed day.

2(c) – Meaning of "reserve" in the proposed definitions of "excluded property and liabilities" and "undertakings" under the Bill

Bank of Communications, Hong Kong Branch would like to explain that the term "reserve" is intended to cover an accounting concept of "reserve" in the books and records of the retail and private banking businesses of Bank of Communications, Hong Kong Branch. It is a well-established accounting principle that, with respect to a company or a business, assets equal liabilities plus equity. The term "reserve" is considered to be within "equity" in the above equation. Accordingly, it is considered that the Bill should make specific references to "assets" (in this case, there are references to the term "property" in the Bill), "liabilities" (in this case, there are references to the term "liabilities" in the Bill), and to "reserve". It is also noted that the term "reserve" has been used in many of the previous bank merger ordinances (including references to such term in the definition of "undertakings" in these ordinances).

2(d) – Regarding the phrase "insurance agent within the meaning of Insurance Companies Ordinance (Cap. 41)" in certain definitions under the Bill

Bank of Communications, Hong Kong Branch considers that the phrase "insurance agent within the meaning of Insurance Companies Ordinance (Cap. 41)" is correct based on the Insurance Companies Ordinance (Cap. 41) currently in force. It is noted that the Government plans to implement the Insurance Companies (Amendment) Ordinance 2015 (the “**Amendment Ordinance**”) in phases. Pursuant to the commencement of the relevant provisions on 7 December 2015, the independent Insurance Authority was established and was immediately renamed as the Provisional Insurance Authority to undertake essential preparatory work. The provisions under the Amendment Ordinance which came into effect on 7 December 2015 do not affect the meaning of insurance agent under the Bill.

It is further noted that the relevant provisions on the statutory licensing regime for insurance intermediaries under the Amendment Ordinance will only come into force two to three years after the establishment of the Provisional Insurance Authority. If

the Bill is to be passed prior to the end of current term of the Legislative Council, based on the current contemplation, the Bank of Communications (Hong Kong) Limited (Merger) Ordinance (the “**Merger Ordinance**”) will be enacted before the aforesaid provisions concerning the statutory licensing regime for insurance intermediaries under the Amendment Ordinance 2015 come into effect. Accordingly, it is considered that the current drafting of the phrase concerned is accurate and appropriate, and that there will not be any confusion in the interpretation or implementation of the Merger Ordinance.