

LEGISLATIVE COUNCIL BRIEF

BANK OF COMMUNICATIONS (HONG KONG) LIMITED (MERGER) BILL

Introduction

1. The Chief Executive granted his consent for Bank of Communications (Hong Kong) Limited (Merger) Bill (the "**Bill**") to be introduced before the Legislative Council on 9 December 2015. This Bill is introduced under Article 74 of the Basic Law by Legislative Council member, Hon. Ng Leung-sing, SBS, JP. The Panel on Financial Affairs of the Legislative Council was consulted regarding the Bill on 6 July 2015, 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 and private banking business of Bank of Communications Co., Ltd. ("**Bank of Communications**") located in Hong Kong, currently operated through a branch in Hong Kong ("**Bank of Communications, Hong Kong Branch**"), to a wholly owned subsidiary within the Bank of Communications group of companies. The subsidiary, Bank of Communications (Hong Kong) Limited ("**Bank of Communications (Hong Kong)**"), is incorporated in Hong Kong and holds a full banking licence under the Banking Ordinance (Cap. 155). Bank of Communications (Hong Kong) is a wholly owned subsidiary of Bank of Communications and is a member of the Bank of Communications group of companies of which Bank of Communications 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 private member's 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 Bank of Communications, 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 Bank of Communications (Hong Kong). As such, a statutory merger as provided by the Bill will be necessary.
4. Bank of Communications has been operating in Hong Kong for more than 80 years. The decision to incorporate its retail and private banking businesses in a Hong Kong subsidiary comes as part of Bank of Communications' strategy to continue to expand its business in Hong Kong, including its retail and private banking businesses, and the incorporation reaffirms the bank's long term commitment to Hong Kong, its customers, employees and business partners.
5. The Bill aims to protect the interests of the customers of Bank of Communications, Hong Kong Branch who will have the reassurance that all Hong Kong law governed property and liabilities have been properly transferred to Bank of Communications (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 Bank of Communications, Hong Kong Branch to Bank of Communications (Hong Kong) will be publicly known. After the transfer, Bank of

Communications, Hong Kong Branch will consist mainly of corporate banking business and other businesses (excluding the retail and private banking businesses that are being carried out by Bank of Communications, Hong Kong Branch on the day of the transfer) which will continue to be carried on in the same manner as before.

6. Since the 1980s the Legislative Council has passed a number of ordinances implementing reorganisations and mergers of banks and other authorised institutions. The Bill is formulated with reference to the form of those bank merger ordinances which were considered to be analogous to the proposed Bank of Communications reorganisation.

The Bill

7. The purpose of the Bill is to transfer the Hong Kong retail and private banking businesses of Bank of Communications currently operated through Bank of Communications, Hong Kong Branch to Bank of Communications (Hong Kong). Bank of Communications is a nationwide state-owned joint stock commercial bank established in China and is authorised under the Banking Ordinance to carry out business of banking in Hong Kong. The A shares of Bank of Communications are listed on the Shanghai Stock Exchange and the H shares of Bank of Communications are listed on The Stock Exchange of Hong Kong Limited. Bank of Communications (Hong Kong) is a wholly-owned subsidiary of Bank of Communications incorporated in Hong Kong.
8. The Bill provides for the vesting of the retail banking business and private banking business of Bank of Communications, Hong Kong Branch which is governed by or subject to Hong Kong law in Bank of Communications (Hong Kong) on the appointed day with the exception of a limited range of excluded property and liabilities as explained in paragraph 9(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 previously 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 Bank of Communications (Hong Kong) to amend these classes of property and liabilities. Paragraphs (a) to (b) correspond to exclusions in previous bank merger bills. Paragraph (c) excludes the activities of Bank of Communications, Hong Kong Branch which relate in whole or in part to the corporate banking business or any other businesses (including treasury) of Bank of Communications, Hong Kong Branch other than those which relate in whole to the retail banking business, or in whole to the private banking business, or in whole to the retail banking business and private banking business. Paragraph (d) excludes all interests in land of Bank of Communications, Hong Kong Branch and Bank of Communications, except for interests of Bank of Communications, Hong Kong Branch in leases of land (but not Government leases) in Hong Kong in respect of premises for which Bank of Communications, Hong Kong Branch operates for the conduct of businesses which relate in whole to the retail banking business, or in whole to

the private banking business, or in whole to the retail banking business and private banking business. It is necessary to include these exclusions in order to ensure that only activities that relate in whole to the retail banking business and private banking business of Bank of Communications, Hong Kong Branch pass to Bank of Communications (Hong Kong) under the Bill.

- (b) **Clause 3** provides that the board of directors of Bank of Communications (Hong Kong) may determine an appointed day upon which the merger will take effect and that such appointed day must be notified by both Bank of Communications (Hong Kong) and Bank of Communications, 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 Bank of Communications, Hong Kong Branch (not including the "excluded property and liabilities") shall transfer to and vest in Bank of Communications (Hong Kong) on the appointed day as if Bank of Communications (Hong Kong) were the same person in law as Bank of Communications, Hong Kong Branch. This clause also provides that where the transfer and vesting of property and liabilities is governed otherwise than by the laws of Hong Kong, Bank of Communications, Hong Kong Branch shall, if required by Bank of Communications (Hong Kong), take all necessary steps to secure the effective transfer and vesting of such property and liabilities in Bank of Communications (Hong Kong) as soon as practicable after the appointed day.
- (d) **Clause 5** deals with property which, before the merger, is held by Bank of Communications, Hong Kong Branch in a capacity as a trustee. It provides that in such a case, the relevant document should be read as if references to Bank of Communications, Hong Kong Branch were references to Bank of Communications (Hong Kong).
- (e) **Clause 6 (a) to (k)** provide that all contracts and agreements made with, given to or addressed to Bank of Communications, Hong Kong Branch (and insurance policies in which Bank of Communications, Hong Kong Branch as an interest) shall, after the merger takes effect, be construed as if Bank of Communications (Hong Kong) had been the original party instead of Bank of Communications, Hong Kong Branch (or Bank of Communications) and, accordingly, all references to Bank of Communications, Hong Kong Branch (or Bank of Communications) must be construed as if they were to Bank of Communications (Hong Kong). **Clause 6 (a) to (k)** also provide for accounts, negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgments to be transferred to Bank of Communications (Hong Kong) upon the appointed day.
- (f) **Clause 6(l)** provides that the transfer of personal data from Bank of Communications, Hong Kong Branch to Bank of Communications (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 Bank of Communications (Hong Kong) any power which he could, before the merger, have exercised in respect of Bank of Communications, Hong Kong Branch.

- (g) **Clause 7** provides for accounting treatment of Bank of Communications (Hong Kong) following the merger.
- (h) **Clause 8** provides for the taxation arrangements following the merger. It also provides that for the purposes of the Inland Revenue Ordinance, Bank of Communications (Hong Kong) shall be treated as if it were the same person in law with regard to the undertakings as Bank of Communications, Hong Kong Branch on and from the appointed day and any profits and losses arising from the undertakings of Bank of Communications, Hong Kong Branch transferred to Bank of Communications (Hong Kong) on or after the appointed day shall be treated as profits and losses of Bank of Communications (Hong Kong). **Clause 8** is intended to have a similar effect to the provisions dealing with taxation matters in previous bank merger ordinances.
- (i) **Clause 9** provides that all contracts of employment of Bank of Communications, Hong Kong Branch with its employees who are solely engaged in the retail banking business and private banking business of Bank of Communications, Hong Kong Branch shall be transferred to Bank of Communications (Hong Kong) at the merger but that such contracts shall be deemed for all purposes to be a single continuing employment. **Clause 9** provides that no directors, secretary or auditor of Bank of Communications, Hong Kong Branch shall, by virtue of the merger only, automatically become a director, secretary or auditor of Bank of Communications (Hong Kong).
- (j) **Clause 10** ensures that the employees of Bank of Communications, Hong Kong Branch who will be transferred to Bank of Communications (Hong Kong) at the merger shall continue to enjoy the same benefits under the mandatory provident fund scheme participated by Bank of Communications, Hong Kong Branch for its employees following the merger as before the merger. Bank of Communications (Hong Kong), as the new employer of those employees following the merger, will have the same entitlements in relation to the employer's contributions to the benefits under the mandatory provident fund scheme as those enjoyed by Bank of Communications, Hong Kong Branch before the merger in respect of those employees.
- (k) **Clause 11** provides that any provision contained in any contract or other document to which Bank of Communications, Hong Kong Branch, Bank of Communications (Hong Kong) or Bank of Communications 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.
- (l) **Clauses 12 to 14** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against Bank of Communications, 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 Bank of Communications (Hong Kong). **Clause 12** provides that, for the purposes of the Evidence Ordinance, banker's records of Bank of Communications, Hong Kong Branch vested in Bank of Communications (Hong Kong) by the Bill

shall be treated as if these were always banker's records of Bank of Communications (Hong Kong).

- (m) **Clause 15** deals with the effect of the merger on interests in land in Hong Kong held by Bank of Communications, Hong Kong Branch (not including the excluded property and liabilities) and provides that the vesting of the interest of Bank of Communications, Hong Kong Branch in land in Bank of Communications (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 15** also provides that the vesting in Bank of Communications (Hong Kong) of Bank of Communications, 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 15** exempts either Bank of Communications (Hong Kong) or Bank of Communications, Hong Kong Branch from the provisions of the Stamp Duty Ordinance. Operation of **Clause 15** is intended to be limited to the interest of Bank of Communications, Hong Kong Branch in premises operated by Bank of Communications, Hong Kong Branch in Hong Kong for conducting the retail banking business and the private banking business and which situate on land that is leased by Bank of Communications, Hong Kong Branch immediately before the appointed day.
- (n) **Clause 16** states that nothing in the Bill shall exempt Bank of Communications, Hong Kong Branch or Bank of Communications (Hong Kong) from any of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.
- (o) **Clause 17** provides that the Bill does not prevent Bank of Communications (Hong Kong) from amending its article of association or dealing with its property or business generally. **Clause 17** also provides that nothing in the Bill prevents Bank of Communications from altering its memorandum and articles of association or dealing with its property generally before the appointed day.
- (p) **Clause 18** 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.

Consultation

- 10. The administration, including the relevant government bureaux and departments, together with relevant statutory authorities, is in support of the Bill.

Legislative Timetable

- 11. The legislative timetable is as follows:

Panel on Financial Affairs	6 July 2015
Publication in the Gazette for the first time	18 December 2015
Publication in the Gazette for the second time	24 December 2015

Publicity

12. The Bill was published in the Gazette on 18 December 2015 and 24 December 2015 and notice of the Bill has been given by way of advertisements in South China Morning Post and Hong Kong Economic Times on 18 December 2015 and 24 December 2015.

Enquiries

13. Any enquiries about this brief can be directed to Dr. Norman Law at the Office of Legislative Councillor, Hon. Ng Leung-sing, SBS, JP at telephone number 2319 5183 or fax number 2319 5133.

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