

立法會
Legislative Council

LC Paper No. CB(1)79/17-18
(These minutes have been seen
by the Administration and the Bank of
Communications Co., Ltd. Hong Kong
Branch)

Ref: CB1/BC/5/16/2

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

**Minutes of first meeting
held on Friday, 9 June 2017, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon WU Chi-wai, MH (Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Kin-por, BBS, JP
Hon YIU Si-wing, BBS
Hon Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Pierre CHAN
Hon CHAN Chun-ying

Member attending : Hon Jimmy NG Wing-ka, JP

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

Financial Services and the Treasury Bureau

Ms Eureka CHEUNG
Principal Assistant Secretary (Financial Services)5

Hong Kong Monetary Authority

Mr Raymond CHAN
Executive Director (Banking Supervision)

Attendance by invitation : For Item II

Bank of Communications Co., Ltd. Hong Kong Branch

Mr SHOU Fugang
Chief Executive

Ms Nancy CHAN
Alternate 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 : Ms Clara TAM
Assistant Legal Adviser 9

Ms Anki NG
Senior Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Election of Chairman

Mr WONG Ting-kwong, the member who had the highest precedence among those who were present at the meeting, presided at the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr WU Chi-wai was nominated by Mr CHAN Chun-ying and the nomination was seconded by Mr Kenneth LEUNG. Mr WU Chi-wai accepted the nomination. There being no other nominations, Mr WU Chi-wai was declared Chairman of the Bills Committee. Mr WU Chi-wai then took over the chair.

3. 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)553/16-17 — The Bill

Issued by Hon CHAN Chun-ying's — Legislative Council Brief
office on 28 April 2017

LC Paper No. LS66/16-17 — Legal Service Division
Report

LC Paper No. CB(1)1101/16-17(01) — Assistant Legal Adviser's
letter dated 31 May 2017 to
Hon CHAN Chun-ying

LC Paper No. CB(1)1101/16-17(02) — Hon CHAN Chun-ying's
reply to Assistant Legal
Adviser's letter dated
31 May 2017

LC Paper No. CB(1)1101/16-17(03) — Background brief prepared
by the Legislative Council
Secretariat)

Action

Disclosure of interests

4. Mr Kenneth LEUNG declared that he was a Senior Consultant of Clifford Chance (the legal adviser of the Bank of Communications Co., Ltd. Hong Kong Branch) ("BCOM, Hong Kong Branch"), and that he would not vote on matters relating to the Bank of Communications (Hong Kong) Limited (Merger) Bill ("the Bill") at meeting(s) of the Bills Committee as he might have direct or indirect pecuniary interest relating to the Bill.
5. Mr CHAN Chun-ying declared that he represented the financial industry.

Discussion

6. Mr CHAN Chun-ying and Mr SHOU Fugang, Chief Executive of BCOM, Hong Kong Branch briefed members on the Bill.
7. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Clause-by-clause examination of the Bill

8. The Bills Committee completed clause-by-clause examination of the Bill.

Committee Stage amendments

9. Concern was raised on the need to propose Committee Stage amendments ("CSAs") to the Bill regarding the reference to "insurance agent within the meaning of the Insurance Companies Ordinance (Cap. 41)" in certain definitions under the Bill, to reflect the renaming of Cap. 41 as the "Insurance Ordinance" from 26 June 2017. Mr CHAN Chun-ying, Member in charge of the Bill, would consider proposing CSAs to this effect if necessary. The Bills Committee raised no objection.

Invitation of public views

10. Members considered it not necessary for the Bills Committee to receive views from deputations on the Bill.

Legislative timetable

11. Members noted Mr CHAN Chun-ying's proposal to resume the Second Reading debate on the Bill at the Council meeting of 5 July 2017. No member raised objection. Members noted that the Chairman would report the deliberations of the Bills Committee to the House Committee on 16 June 2017.

Action

The deadline for giving notice to move CSAs, if any, to the Bill was 24 June 2017.

III. Any other business

12. There being no other business, the meeting ended at 9:47 am.

Council Business Division 1
Legislative Council Secretariat
20 October 2017

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

**Proceedings of the first meeting
on Friday, 9 June 2017, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
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| <i>Agenda Item I - Election of Chairman</i> | | | |
| 000445 – 000620 | Mr WONG Ting-kwong Mr CHAN Chun-ying Mr Kenneth LEUNG Mr WU Chi-wai | Election of Chairman | |
| <i>Agenda Item II - Meeting with the Bank of Communications Co., Ltd. Hong Kong Branch and the Administration</i> | | | |
| 000621 – 001827 | Chairman Mr Kenneth LEUNG Mr CHAN Chun-ying Bank of Communications Co., Ltd. Hong Kong Branch ("BCOM, Hong Kong Branch") | Disclosure of interests by Mr LEUNG and Mr CHAN Briefing by Mr CHAN and BCOM, Hong Kong Branch on the Bank of Communications (Hong Kong) Limited (Merger) Bill ("the Bill") which was a Member's bill introduced by Mr CHAN (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 Bank of Communications group of companies of which Bank of Communications Co., Ltd. was the ultimate holding company ("the proposed business transfer"). | |
| 001828 – 002434 | Chairman Mr YIU Si-wing BCOM, Hong Kong Branch PricewaterhouseCoopers | Mr YIU enquired about: (a) BCOM's plan to expand its local business, such as the investments to be made and the number of new staff to be recruited; and (b) the impact of the proposed business transfer on tax revenue. BCOM, Hong Kong Branch advised that a number of initiatives taken forward by the Mainland, in particular the development of "The Belt and Road Initiative" and the | |

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| | | <p>"Guangdong-Hong Kong-Macao Greater Bay Area", would bring about new business opportunities to Hong Kong as an international financial hub and create demand for financial experts. Riding on these initiatives, BCOM would continue to hire new staff for both its branch and subsidiary in Hong Kong.</p> <p>PricewaterhouseCoopers (financial adviser to BCOM, Hong Kong Branch) advised that for the purposes of the Inland Revenue Ordinance (Cap. 112), clause 8 of the Bill had the effect of deeming BCOM (Hong Kong) as the continuation of and the same person in law 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 ("the appointed day"). BCOM, Hong Kong Branch would be liable for taxation in Hong Kong up to the appointed day, and BCOM (Hong Kong) would be so liable on and after the appointed day. As such, there should be no implications arising from the proposed business transfer on the tax payable.</p> | |
| 002435 – 002620 | Chairman Mr WONG Ting-kwong | Mr WONG remarked that a similar bill had been introduced by Mr NG Leung-sing into the Fifth Legislative Council in 2016 to give effect to the proposed business transfer and a bills committee was then formed to study the bill. However, the Second Reading debate of that bill had not been dealt with at the relevant Council meeting. Noting that the provisions of the Bill were similar to previously enacted bank merger Ordinances in Hong Kong, Mr WONG supported early passage of the Bill. | |
| 002621 – 003955 | Chairman Mr James TO Assistant Legal Adviser 9 ("ALA") Mr CHAN Chun-ying Clifford Chance | <p>In response to Mr TO's enquiry, Mr CHAN and BCOM, Hong Kong Branch confirmed that the Bill was substantially the same as the one introduced by Mr NG Leung-sing in 2016 except with the following two revisions:</p> <p>(a) in paragraph (c) of the definition of "excluded property and liabilities" in clause 2(1) of the Bill, the expression "(including treasury)" was deleted; and</p> <p>(b) in clause 6(b) of the Bill, the expression "(or any existing contract to which it</p> | |

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| | | <p>was a party in respect of the excluded property and liabilities)" was added.</p> <p>The Chairman and ALA enquired about the reasons for adopting the two revisions in the Bill.</p> <p>Clifford Chance (legal adviser to BCOM, Hong Kong Branch) explained that:</p> <p>(a) it was proposed to effect the aforesaid amendment for paragraph (c) of the definition of "excluded property and liabilities" in clause 2(1) of the Bill since the provision under the amended paragraph (c) was generic enough to cover all the "excluded property and liabilities" so long as the business involved was not solely related to retail banking business and/or private banking business of BCOM, Hong Kong Branch; and</p> <p>(b) in clause 6(b) of the Bill, the expression "(or any existing contract to which it was a party in respect of the excluded property and liabilities)" was added because the intention of paragraph 6(b) was to capture contracts for which BCOM, Hong Kong Branch or BCOM (in the conduct of its retail or private banking business) was not a party but such contract related to, or was in relation to, "undertakings" of BCOM, Hong Kong Branch. The proposed amendment would achieve the same effect with a contract to which BCOM, Hong Kong Branch was a party in respect of the excluded property and liabilities (e.g. in the conduct of its corporate banking business), but which related to, or was in relation to, the "undertakings" of BCOM, Hong Kong Branch.</p> | |
| 003956 – 004825 | Chairman Mr James TO Clifford Chance | <p>Mr TO enquired:</p> <p>(a) how BCOM, Hong Kong Branch would ensure that the said revisions would not give rise to transfer of business outside the intended scope under the Bill; and</p> | |

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| | | <p>(b) whether BCOM, Hong Kong Branch had the discretion to, out of commercial considerations, retain high value accounts of retail banking and private banking businesses, and exclude them from the proposed business transfer.</p> <p>Clifford Chance advised that the scope of business to be transferred was well defined by the definition of "undertakings" in the Bill and elaborated under clause 6 to cover only the transfer of the activities, assets and liabilities which constituted the retail banking and private banking business of BCOM, Hong Kong Branch to BCOM (Hong Kong), and would not capture business beyond the intended scope. Given that customers were classified into retail, private, corporate or institutional customers when they opened accounts with the bank, this would form a clear basis for determining which customer accounts should be transferred under the Bill.</p> | |
| 004826 - 005220 | Chairman BCOM, Hong Kong Branch Mr James TO | <p>The Chairman enquired whether existing customers would be allowed to opt for retaining their accounts with BCOM, Hong Kong Branch.</p> <p>BCOM, Hong Kong Branch responded that individual customers who did not wish to maintain accounts with BCOM (Hong Kong) would have the option of closing their accounts through normal procedures. BCOM (Hong Kong) would assist them to transfer their accounts to another bank or back to BCOM, Hong Kong Branch, if appropriate.</p> <p>In response to Mr TO's concerns about notification to the bank customers on the proposed business transfer, BCOM, Hong Kong Branch advised that:</p> <p>(a) at the time of the commencement of the legislative process in June 2015 for enactment of the bill introduced by Mr NG Leung-sing, BCOM, Hong Kong Branch had issued a formal announcement through the website of Hong Kong Exchanges and Clearing Limited informing the public of the proposed business transfer; and</p> | |

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| | | (b) upon passage of the Bill, there would be a two-month notification period prior to the appointed day of transfer. BCOM, Hong Kong Branch would issue letters of notification to its existing customers and provide assistance to the customers as appropriate. | |
| 005221-005905 | Chairman Mr James TO PricewaterhouseCoopers Mr CHAN Chun-ying The Administration | Mr TO sought assessment of the impact of the proposed business transfer on tax revenue with regard to the appointed day for effecting the Bill. PricewaterhouseCoopers reiterated the arrangements as provided for under clause 8 of the Bill as detailed in paragraph 8 of LC Paper No. CB(1)1142/16-17. The Administration advised that it had sought comments from relevant bureaux/departments, including the Inland Revenue Department, on the Bill, and considered that the proposed business transfer would not adversely impact on tax revenue. | |
| 005906 - 010717 | Chairman Clifford Chance Mr CHAN Chun-ying ALA | Discussion on the need to introduce Committee Stage amendments ("CSAs") regarding the reference "insurance agent within the meaning of the Insurance Companies Ordinance (Cap. 41)" used in certain definitions under the Bill to reflect the renaming of Cap. 41 as the "Insurance Ordinance" with effect from 26 June 2017. | |
| Clause-by-clause examination of the Bill <i>[The Bill (LC Paper No. CB(3)553/16-17)]</i> | | | |
| 010718 – 011935 | Chairman ALA Clifford Chance | Clifford Chance confirmed that apart from the two revised provisions as advised and the possible need to introduce CSAs regarding the renaming of Cap. 41, the Bill was identical to the one introduced by Mr NG Leung-sing in 2016. The Bills Committee conducted clause-by-clause examination of the Bill. <u>Clause 1 — Short title</u> <u>Clause 2 — Interpretation</u> | |

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| | | <p><u>Clause 3 — Notice of appointed day</u></p> <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><u>Clause 6 — Supplementary provisions</u></p> <p><u>Clause 7 — Accounting treatment of Bank of Communications (Hong Kong) and Bank of Communications, Hong Kong Branch</u></p> <p><u>Clause 8 — Taxation and revenue matters</u></p> <p><u>Clause 9 — Contracts of employment</u></p> <p><u>Clause 10 — Mandatory provident fund scheme</u></p> <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><u>Clause 15 — Interests in land</u></p> <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>Members raised no queries.</p> | |
| Agenda Item III — Any other business | | | |
| 011936– 012221 | Chairman Mr CHAN Chun-ying | Legislative timetable | |