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

Purpose

This paper reports on the deliberations of the Bills Committee on Bank of Communications (Hong Kong) Limited (Merger) Bill ("the Bills Committee").

Background

2. To implement a bank merger, acquisition or transfer of business (collectively referred to as "merger") in Hong Kong, the institutions concerned must first obtain the relevant supervisory approvals of the Monetary Authority under the Banking Ordinance (Cap. 155) ("BO"). In addition, they should find a legally effective way to transfer the existing assets and liabilities to a new entity or to the institution which remains after the merger. Currently, there is no common international practice in effecting transfer of banking business. Mergers in Hong Kong involving locally-incorporated banks are normally effected by private legislation with the approval of the Legislative Council ("LegCo").¹

¹ For details of the framework of transferring banking business in Hong Kong, please refer to the information note dated 27 January 2006 and provided by the Financial Services and the Treasury Bureau to the Panel on Financial Affairs (LC Paper No. [CB\(1\)813/05-06\(01\)](#)).

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

3. The Bank of Communications (Hong Kong) Limited (Merger) Bill ("the Bill") is a Member's bill introduced by Hon CHAN Chun-ying (with the consent of the Chief Executive) to provide 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. ("BCOM") located in Hong Kong, currently operated through a branch in Hong Kong ("BCOM, Hong Kong Branch"), to a wholly owned subsidiary within the BCOM group of companies of which BCOM is the ultimate holding company ("the proposed business transfer"). The subsidiary, Bank of Communications (Hong Kong) Limited ("BCOM (Hong Kong)"), is incorporated in Hong Kong and holds a full banking licence under BO.

4. The LegCo Panel on Financial Affairs was consulted on the Bill at its meeting on 5 December 2016. The Bill was published in the Gazette on 21 and 28 April 2017, and received its First Reading at the LegCo meeting of 24 May 2017.

The Bills Committee

5. At the House Committee meeting on 26 May 2017, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in the **Appendix**. Under the chairmanship of Hon WU Chi-wai, the Bills Committee has held one meeting to discuss the Bill with BCOM, Hong Kong Branch and the Administration.

Deliberations of the Bills Committee

Benefits of the proposed business transfer

6. The Bills Committee notes that the proposed business transfer is part of BCOM's strategy to expand and intensify its business in Hong Kong and is in line with the rising trend for international financial institutions to transfer their retail banking businesses to locally-incorporated subsidiaries. As BCOM (Hong Kong), the subsidiary established in Hong Kong, will have a corporate governance structure consisting mainly of an independent board of directors, board-level committees and senior management in accordance with the local regulatory requirements, this will strengthen the internal governance of the bank and enhance the transparency of its operation. Given that locally incorporated banks are required to observe the local requirements in relation to, among others,

corporate governance, capital, large exposure limits and connected lending limits, subsidiarization of BCOM will enable the Hong Kong Monetary Authority to more effectively carry out its duty to protect depositors of the bank under BO.

7. The Bills Committee has enquired about BCOM's plan to expand its local business, such as the investments to be made and the number of new staff to be recruited. BCOM, Hong Kong Branch has advised that a number of initiatives taken forward by the Mainland, in particular the development of "The Belt and Road Initiative " and the "Guangdong-Hong Kong-Macao Greater Bay Area", will bring about new business opportunities to Hong Kong as an international financial hub and create demand for financial experts. Riding on these initiatives, BCOM will continue to hire new staff for both its branch and subsidiary in Hong Kong.

Impact on tax revenue

8. The Bills Committee has sought assessment of the impact of the proposed business transfer on tax revenue. BCOM, Hong Kong Branch has advised that for the purposes of the Inland Revenue Ordinance (Cap. 112) ("IRO"), clause 8 of the Bill has 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").² Where any tax relief is resulted by deduction, depreciation allowance or other means given to both BCOM, Hong Kong Branch and BCOM (Hong Kong) in respect of the same expenditure, outgoing or asset for the same year of assessment, tax relief is to be granted only to BCOM, Hong Kong Branch or BCOM (Hong Kong) as the Commissioner of Inland Revenue thinks fit having regard to all relevant facts including the intended effect of IRO. As such, there should be no implications arising from the proposed business transfer on the tax payable. The Administration has advised that it has sought comments from relevant government bureaux and departments including the Inland Revenue

² Clause 8(3) of the Bill provides that the profits or losses of BCOM, Hong Kong Branch arising in the year of assessment in which the appointed day occurs, and for the period ending immediately before the appointed day, are to be taken into account for the computation of the profits of BCOM, Hong Kong Branch which are chargeable to tax under Part 4 of IRO for the year of assessment in which the appointed day occurs. Pursuant to clause 8(4) of the Bill, the profits or losses arising from the undertakings transferred to BCOM (Hong Kong) for any period beginning on or after the appointed day are to be taken into account for the computation of the profits of BCOM (Hong Kong) which are chargeable to tax under Part 4 of IRO for the year of assessment in which the profits or losses arise.

Department on the Bill, and considered that the proposed business transfer will not adversely impact on tax revenue.

Scope of the proposed business transfer

9. The Bills Committee notes that a bill was introduced by Hon NG Leung-sing (a former LegCo Member) into the Fifth LegCo 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 the bill was then not dealt with at the relevant Council meeting. As confirmed by Hon CHAN Chun-ying and BCOM, Hong Kong Branch, the Bill is substantially the same as the one introduced by Hon NG Leung-sing except with the following two revisions:

- (a) in paragraph (c) of the definition of "excluded property and liabilities" in clause 2(1) of the Bill, the expression "(including treasury)" is deleted; and
- (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)" is added.

10. On the reasons for adopting the above revisions in the Bill, BCOM, Hong Kong Branch has advised that:

- (a) having considered the comments and the original intention for proposing the amendment, BCOM, Hong Kong Branch considers it best to effect the said amendment for paragraph (c) in clause 2(1) of the Bill since the provision under the amended paragraph (c) is generic enough to cover all the "excluded property and liabilities" so long as the business involved is not solely related to retail banking business and/or private banking business of BCOM, Hong Kong Branch; and
- (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)" is added because the intention of paragraph 6(b) is to capture contracts for which BCOM, Hong Kong Branch or BCOM (in the conduct of its retail or private banking business) is not a party but such contract relates to, or is in relation to, the

"undertakings" of BCOM, Hong Kong Branch.³ The proposed amendment would achieve the same effect with a contract to which BCOM, Hong Kong Branch is a party in respect of the excluded property and liabilities (e.g. in the conduct of its corporate banking business), but which relates to, or is in relation to, the "undertakings" of BCOM, Hong Kong Branch.

11. Hon James TO has enquired how BCOM, Hong Kong Branch will ensure that the said revisions will not give rise to transfer of business outside the intended scope under the Bill, and whether BCOM, Hong Kong Branch has 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. BCOM, Hong Kong Branch has advised that the scope of business to be transferred is 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 constitutes the retail banking and private banking business of BCOM, Hong Kong Branch to BCOM (Hong Kong), and will not capture business beyond the intended scope. Given that customers are classified into retail, private, corporate or institutional customers when they open accounts with the bank, this will form a clear basis for determining which customer accounts should be transferred under the Bill.

Notification to customers

12. Regarding the notification to customers of BCOM, Hong Kong Branch about the proposed business transfer, the bank has advised that at the time of the commencement of the legislative process in June 2015 for enactment of the bill introduced by Hon 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. Upon passage of the Bill, there will be a two-month notification period prior to the appointed day of transfer. BCOM, Hong Kong Branch will issue letters of notification to its existing customers and provide assistance to the customers as

³ For example, if a retail customer of BCOM, Hong Kong Branch gives a standing instruction to The Hong Kong and Shanghai Banking Corporation ("HSBC") to transfer a specified amount from the customer's HSBC account to a bank account in the name of the same retail customer opened with BCOM, Hong Kong Branch, that document will specify a bank account number of BCOM, Hong Kong Branch which falls within the ambit of the "undertakings" subject to the proposed business transfer. On the appointed day, with the effect of the Bill, the reference to that bank account number in the HSBC standing instruction will be changed to the customer's same account which will be transferred to BCOM (Hong Kong).

appropriate. Individual customers who do not wish to maintain accounts with BCOM (Hong Kong) will have the option of closing their accounts through normal procedures. BCOM (Hong Kong) will assist them to transfer their accounts to another bank or back to BCOM, Hong Kong Branch, if appropriate.

Committee Stage amendments

13. Hon CHAN Chun-ying, Member in charge of the Bill, has proposed 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. The Bills Committee has no objection to the proposed CSAs. The Bills Committee has not proposed any CSA to the Bill.

Resumption of Second Reading debate

14. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 5 July 2017.

Consultation with the House Committee

15. The Bills Committee reported its deliberations to the House Committee on 16 June 2017.

Council Business Division 1
Legislative Council Secretariat
22 June 2017

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

Membership list

Chairman Hon WU Chi-wai, MH

Members 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
Hon Jimmy NG Wing-ka, JP
Dr Hon Pierre CHAN
Hon CHAN Chun-ying

(Total: 10 members)

Clerk Ms Angel SHEK

Legal Adviser Ms Clara TAM