

立法會
Legislative Council

LC Paper No. LS66/16-17

**Paper for the House Committee Meeting
on 19 May 2017**

**Legal Service Division Report on
Bank of Communications (Hong Kong) Limited (Merger) Bill
(Member's Bill)**

I. SUMMARY

- 1. The Bill**
 - (a) The Bill is a Member's Bill introduced with the consent of the Chief Executive. The Member in charge is Hon CHAN Chun-ying.
 - (b) The Bill seeks to provide for the transfer of the retail banking business and private banking business of the Hong Kong Branch of Bank of Communications Co., Ltd. to Bank of Communications (Hong Kong) Limited and for other related purposes.
 - (c) The Bill is substantially the same as the Bank of Communications (Hong Kong) Limited (Merger) Bill introduced by Hon NG Leung-sing, SBS, JP into the Fifth Legislative Council ("LegCo") in 2016 and is generally similar to previously enacted bank merger ordinances.
- 2. Public Consultation**

It is not stated in the LegCo Brief that the public has been consulted.
- 3. Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on the draft Bill on 5 December 2016. Members had no objection to the introduction of the Bill into the LegCo.
- 4. Conclusion**

No difficulties have been identified in the legal and drafting aspects of the Bill. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

II. REPORT

The Bill is scheduled for first reading at the Council meeting of 17 May 2017. Members may refer to the Legislative Council ("LegCo") Brief dated 28 April 2017 issued by Hon CHAN Chun-ying for further details.

Object of the Bill

2. The Bill seeks to provide for the vesting in Bank of Communications (Hong Kong) Limited ("Bank of Communications (Hong Kong)") of the undertakings of the Hong Kong Branch of Bank of Communications Co., Ltd. ("Hong Kong Branch"), which constitute the retail banking business and private banking business of the Hong Kong Branch (except for certain excluded property and liabilities), and for other related purposes.

Background

3. This is a Member's Bill introduced with the consent of the Chief Executive. The Member in charge is Hon CHAN Chun-ying.

4. As stated in the Preamble to the Bill, Bank of Communications (Hong Kong) is a wholly owned subsidiary of Bank of Communications Co., Ltd. ("Bank of Communications"). The latter is a joint-stock company incorporated under the laws of the People's Republic of China and is a bank authorized under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong and elsewhere. Bank of Communications operates the retail banking business and private banking business in Hong Kong through the Hong Kong Branch.

5. The President has ruled that the Bill relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure ("RoP") and requires the written consent of the Chief Executive for its introduction. By a letter dated 7 April 2017, the Chief Executive gave consent for the Bill to be introduced into LegCo. In accordance with Rule 54(1) of RoP, the Secretary for Financial Services and the Treasury will signify such written consent before the Council enters upon consideration of the second reading of the Bill.

6. The Bill is substantially the same as the Bank of Communications (Hong Kong) Limited (Merger) Bill introduced by Hon NG Leung-sing, SBS, JP into the Fifth LegCo ("the 2016 bill")¹ in 2016 and is generally similar to

¹ Except with revisions to the definition of "excluded property and liabilities" in clause 2(1) (see further explanation on this point in paragraph 7 of this report) and technical amendments to clause 6(b) of the Bill.

previously enacted bank merger ordinances in Hong Kong. The 2016 Bill received its First and Second Readings at the Council meeting of 22 June 2016. A Bills Committee was formed to study the 2016 Bill. The resumption of the Second Reading debate on the 2016 Bill was placed on the Agenda for the LegCo meeting of 13 July 2016 but not reached before the Fifth LegCo stood prorogued on 16 July 2016. Accordingly, the 2016 Bill had lapsed at the end of the Fifth LegCo.

7. During the deliberations of the Bills Committee on the 2016 Bill, members discussed a wide range of issues including the benefits of the proposed transfer of business and the possible impacts on existing customers and employees. The Bills Committee noted that the proposed transfer was supported by the Hong Kong Monetary Authority ("HKMA") and the rights and protection affordable to existing customers and employees would remain unchanged after the transfer. Some members had queries over the scope of the banking business to be transferred and in particular, the drafting of the definition of "excluded property and liabilities". In response, the Hong Kong Branch provided supplementary information on the property, reserves and liabilities to be transferred to Bank of Communications (Hong Kong) for members' reference (LC Paper No. CB(1)1106/15-16(03)). Members may refer to the report of the Bills Committee on the 2016 Bill (LC Paper No. CB(1)1117/15-16) for further details.

Provisions of the Bill

8. The key provisions of the Bill are set out in the following paragraphs.

Vesting of undertakings on the appointed day

9. Clause 4 of the Bill seeks to provide that the vesting of the undertakings in Bank of Communications (Hong Kong) would take effect on the appointed day without further act or deed, and Bank of Communications (Hong Kong) would succeed to the undertakings of the Hong Kong Branch as if in all respects Bank of Communications (Hong Kong) were the same person in law as the Hong Kong Branch. Clause 3 of the Bill provides that the directors of Bank of Communications (Hong Kong) may appoint a day to be the appointed day and that Bank of Communications (Hong Kong) and the Hong Kong Branch must give joint notice in the Gazette stating the appointed day. According to paragraph 8 of the LegCo Brief, the appointed day will be decided in consultation with HKMA.

10. The undertakings to be vested in Bank of Communications (Hong Kong) would not include "excluded property and liabilities", details of which are set out under the relevant definition in clause 2(1) of the Bill².

Existing customers' accounts

11. As regards the existing customers' accounts with the Hong Kong Branch, clause 6(c) provides that any account between the Hong Kong Branch and a customer would, on the appointed day, be transferred to Bank of Communications (Hong Kong) and become an account between Bank of Communications (Hong Kong) and that customer subject to the same conditions and each account would be deemed for all purposes to be a single continuing account.

Transfer of personal data

12. Clause 6(l) provides that the transfer to Bank of Communications (Hong Kong) of the undertakings of the Hong Kong Branch, and any disclosure to Bank of Communications (Hong Kong) of any information in contemplation or as a result of the transfer would not amount to a breach of any duty of confidentiality to which the Hong Kong Branch is subject immediately before the appointed day or to a contravention by Bank of Communications (Hong Kong) or the Hong Kong Branch of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles. Hence, there would be no need for the Hong Kong Branch to obtain the prescribed consent from the data subjects in accordance with data protection principle 3 under Cap. 486 for the transfer or disclosure of the relevant data to Bank of Communications (Hong Kong).

Taxation matters

13. Under clause 7, the undertakings of the Hong Kong Branch would be transferred to Bank of Communications (Hong Kong) at their carrying value in the accounts of the Hong Kong Branch immediately before the appointed day. Under clause 8, Bank of Communications (Hong Kong) would be treated on and from the appointed day as if it were the continuation of and the same person in law with regard to the undertakings as the Hong Kong Branch for the purposes of the Inland Revenue Ordinance (Cap. 112). The legal effect is that Bank of Communications (Hong Kong) would be able to qualify under section 19C(4) of Cap. 112 to claim set-off of loss arising from the undertakings which may have been incurred by the Hong Kong Branch against the assessable profits of Bank of Communications (Hong Kong).

² A member of the Bills Committee on the 2016 Bill had queries on the meaning of "any other business (including treasury)" in paragraph (c) of the definition of "excluded property and liabilities". In the Bill, "including treasury" does not appear in paragraph (c) of the definition of the term.

Employment contracts

14. According to clause 9(1), any employment with the Hong Kong Branch and Bank of Communications (Hong Kong) under a contract for the employment of any person who is solely engaged in the transferred undertakings would be deemed for all purposes to be a single continuing employment.

Mandatory provident fund scheme

15. By virtue of clause 10, any reference to the Hong Kong Branch in the deeds, rules and documents relating to the mandatory provident fund ("MPF") scheme established by the Hong Kong Branch, in respect of members of such scheme who become employees of Bank of Communications (Hong Kong) only because of the Bill, would be on and from the appointed day substituted by a reference to Bank of Communications (Hong Kong). The effect is that Bank of Communications (Hong Kong) would not be required to set up a new MPF scheme for the employees transferred from the Hong Kong Branch and such employees' interests or entitlements in and the terms of the original MPF scheme would remain unchanged.

Saving provisions

16. Clause 16 of the Bill provides that nothing in the Bill would exempt the Hong Kong Branch, Bank of Communications (Hong Kong), Bank of Communications or their subsidiaries from any enactment regulating the carrying on of the business of any of them. This means that the passage of the Bill would not exempt the above banks from obtaining the necessary approval or consent from HKMA under the Banking Ordinance (Cap. 155) or exempt them from complying with the Companies Ordinance (Cap. 622).

17. Pursuant to Rule 50(8) of the Rules of Procedure, the Bill contains a saving provision (clause 18), which provides that nothing in the Bill would affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in the Bill and those claiming by, from or under them.

Commencement

18. There is no commencement provision in the Bill. By virtue of section 20(2)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill, upon enactment, would commence on the day on which it is published in the Gazette.

Public Consultation

19. It is not stated in the LegCo Brief that the public has been consulted. However, according to paragraph 10 of the LegCo Brief, the Administration, including the relevant government bureaux and departments, together with the relevant statutory authorities, is in support of the Bill. By a letter dated 7 February 2017 from the Hong Kong Branch (vide LC Paper No. CB(1)566/16-17(03)), Members were informed that when the legislative process for the 2016 Bill commenced in June 2015, Bank of Communications Co., Ltd. issued a formal announcement through the website of Hong Kong Exchanges and Clearing Limited informing the public of the proposed transfer of undertakings.

Consultation with LegCo Panel

20. The Panel on Financial Affairs was briefed on the draft Bill on 5 December 2016. Members had no objection to the introduction of the Bill into the LegCo. Members raised enquiries/concerns on certain issues, including the scope of banking businesses to be transferred under the proposed business transfer, the power of Bank of Communications Co., Ltd. to designate certain property and liabilities of the retail or private banking business to be excluded from the transfer, protection of existing customers' interests during the transfer, and the effect of the merger on interests in land.

Conclusion

21. No difficulties have been identified in the legal and drafting aspects of the Bill. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

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