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# **Bank of Communications (Hong Kong) Limited (Merger) Ordinance**

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**ORDINANCE NO. 11 OF 2017**

L.S.

Carrie LAM  
Chief Executive  
13 July 2017

An Ordinance to provide for the vesting in Bank of Communications (Hong Kong) Limited of the undertakings of the Hong Kong branch of Bank of Communications Co., Ltd. and for other related purposes.

[14 July 2017]

**Preamble**

WHEREAS—

- (a) Bank of Communications (Hong Kong) Limited (交通銀行(香港)有限公司) (*Bank of Communications (Hong Kong)*) is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank authorized under the Banking Ordinance (Cap. 155);
- (b) Bank of Communications Co., Ltd. (交通銀行股份有限公司) (*Bank of Communications*) is a joint-stock company incorporated under the laws of the People's Republic of China having its registered office in 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;

- (c) Bank of Communications operates that part of its business which constitutes the retail banking business and private banking business in Hong Kong through a branch in Hong Kong (***Bank of Communications, Hong Kong Branch***);
- (d) 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;
- (e) for the better conduct of the businesses of Bank of Communications (Hong Kong) and Bank of Communications, it is expedient that the undertakings of Bank of Communications, Hong Kong Branch which constitute the retail banking business and private banking business of Bank of Communications, Hong Kong Branch in Hong Kong (except for certain excluded property and liabilities) be merged into, and succeeded by, Bank of Communications (Hong Kong) and that the merger and succession should occur by means of a transfer of the undertakings of Bank of Communications, Hong Kong Branch to Bank of Communications (Hong Kong), while Bank of Communications, Hong Kong Branch continues to be in existence and operate in Hong Kong after the transfer; and
- (f) in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of Bank of Communications, Hong Kong Branch, it is expedient that the undertakings be transferred to Bank of Communications (Hong Kong) by this Ordinance without interference with

the conduct and continuity of the business of Bank of Communications, Hong Kong Branch:

NOW, THEREFORE, it is enacted by the Legislative Council as follows—

**1. Short title**

This Ordinance may be cited as the Bank of Communications (Hong Kong) Limited (Merger) Ordinance.

**2. Interpretation**

(1) In this Ordinance—

***appointed day*** (指定日期) means the day that may be appointed pursuant to section 3;

***Bank of Communications*** (交銀) means Bank of Communications Co., Ltd. (交通銀行股份有限公司);

***Bank of Communications (Hong Kong)*** (交銀(香港)) means Bank of Communications (Hong Kong) Limited (交通銀行(香港)有限公司);

***Bank of Communications, Hong Kong Branch*** (交銀香港分行) means Bank of Communications acting through each of the places in Hong Kong at which Bank of Communications carries on business;

***banking or other financial services*** (銀行或其他財務服務) includes the taking of deposits, the provision of payment and remittance services, the provision of facilities for the purchase or sale of foreign currencies, securities or other financial instruments and the incurring of financial exposure mentioned in section 81(2) of the Banking Ordinance (Cap. 155);

***corporate banking business*** (公司銀行業務) means—

- (a) the business carried on by Bank of Communications, Hong Kong Branch for the provision of banking or other financial services and acting as an insurance agent within the meaning of the Insurance Ordinance (Cap. 41) as well as a registered intermediary carrying on regulated activities under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) for the provision of services to companies which are classified as part of the corporate banking business in the books and records of Bank of Communications, Hong Kong Branch; and
- (b) all existing property and liabilities of whatever nature as recorded in or created by any of the books and records of Bank of Communications, Hong Kong Branch that are kept in respect of the corporate banking business;

**customer** (客户) means any person having a banking account or other dealing, transaction or arrangement with Bank of Communications, Hong Kong Branch;

**data protection principles** (保障資料原則) means the data protection principles set out in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486);

**excluded property and liabilities** (除外財產及法律責任) means—

- (a) the common seal of Bank of Communications, Hong Kong Branch;
- (b) documents required to be kept by Bank of Communications, Hong Kong Branch in accordance with the Companies Ordinance (Cap. 622), the Company Law of the People's Republic of China and other applicable law;

- (c) all existing property, reserves and liabilities of Bank of Communications, Hong Kong Branch of whatever nature which relate in whole or in part to the corporate banking business or any other businesses 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;
- (d) all interests in land of Bank of Communications, Hong Kong Branch and Bank of Communications, except for the following—
  - (i) interests of Bank of Communications, Hong Kong Branch or Bank of Communications in leases of land (but not Government leases) in Hong Kong in respect of premises on 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; and
  - (ii) security interest of Bank of Communications, Hong Kong Branch or Bank of Communications in land in Hong Kong, which relates 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; and
- (e) other property and liabilities of the retail banking business or private banking business of Bank of Communications, Hong Kong Branch as may on or before the appointed day be specified by a resolution

or resolutions of the board of directors of Bank of Communications or by a certificate given by an authorized person of Bank of Communications;

**existing** (現有) means existing, outstanding or in force immediately before the appointed day;

**liabilities** (法律責任) means duties and obligations of every description (whether present or future, actual or contingent);

**Privacy Commissioner** (私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap. 486);

**private banking business** (私人銀行業務) means—

- (a) the business carried on by Bank of Communications, Hong Kong Branch for the provision of banking or other financial services and acting as an insurance agent within the meaning of the Insurance Ordinance (Cap. 41) as well as a registered intermediary carrying on regulated activities under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) for the provision of services to individuals, firms, partnerships, unincorporated businesses or companies which are considered by Bank of Communications, Hong Kong Branch to be of high net worth and classified as part of the private banking business in the books and records of Bank of Communications, Hong Kong Branch; and
- (b) all existing property and liabilities of whatever nature as recorded in or created by any of the books and records of Bank of Communications, Hong Kong Branch that are kept in respect of the private banking business;



**property** (財產) means property and assets of every description wherever situate and rights of every description (whether present or future, actual or contingent) including rights as beneficiary under trust or nominee arrangements and includes property held on trust or in a fiduciary capacity and security interests, benefits and powers of every description;

**retail banking business** (零售銀行業務) means—

- (a) the business carried on by Bank of Communications, Hong Kong Branch for the provision of banking or other financial services and acting as an insurance agent within the meaning of the Insurance Ordinance (Cap. 41) as well as a registered intermediary carrying on regulated activities under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) for the provision of services to individuals, firms, partnerships, unincorporated businesses or companies which are classified as part of the retail banking business in the books and records of Bank of Communications, Hong Kong Branch; and
- (b) all existing property and liabilities of whatever nature as recorded in or created by any of the books and records of Bank of Communications, Hong Kong Branch that are kept in respect of the retail banking business;

**security interest** (抵押權益) includes a mortgage or charge (whether legal or equitable and whether fixed or floating), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, hypothec, assignment by way of security, indemnity, right of set-off, flawed asset arrangement, agreement or undertaking, right of compensation or undertaking, any standard security, any assignation or

disposition *ex facie* absolute and any agreement or other deed, instrument or document qualifying it, any bond and disposition or assignation in security, any bond of cash credit, any bond of cash credit and disposition or assignation in security, any assignation in security, any real right or burden of whatever kind in the nature of a security and any other deed, document, conveyance, instrument, arrangement or means (in each case made, granted, arising or subsisting under any applicable law) for securing the payment or discharge of a debt or liability and also includes any agreement or undertaking (in each case, whether in writing or not) to give or execute any of the matters as referred to in this definition whether on demand or otherwise or other means (in each case made, granted, arising or subsisting under any applicable law) for securing the payment or discharge of a debt or liability (whether present or future, actual or contingent);

***subsidiary*** (附屬公司) means a subsidiary within the meaning of the Companies Ordinance (Cap. 622);

***undertakings*** (業務) means the businesses and all existing property, reserves and liabilities of Bank of Communications, Hong Kong Branch of whatever nature as recorded in or created by any of the books and records of Bank of Communications, Hong Kong Branch (other than any excluded property and liabilities).

- (2) Any reference in this Ordinance to property or liabilities of Bank of Communications, Hong Kong Branch is a reference to property or liabilities (other than the excluded property and liabilities) to which Bank of Communications, Hong Kong Branch is immediately before the appointed day entitled or subject (whether beneficially or in any fiduciary capacity), wherever the

property or liabilities are situated or arise and whether or not the property or liabilities are capable of being transferred or assigned by Bank of Communications, Hong Kong Branch, and whether Bank of Communications, Hong Kong Branch is entitled to the property or subject to the liabilities under the laws of Hong Kong or under the laws of any country, territory or place outside Hong Kong.

- (3) Any body politic or corporate and any other person or persons whose rights are affected by any of the provisions of this Ordinance are deemed to be mentioned in this Ordinance.

### **3. Notice of appointed day**

- (1) The directors of Bank of Communications (Hong Kong) may appoint a day to be the appointed day for this Ordinance.
- (2) Bank of Communications (Hong Kong) and Bank of Communications, Hong Kong Branch must give joint notice in the Gazette stating the day appointed to be the appointed day except that, in the event that the day appointed proves not to be the appointed day for any reason, Bank of Communications (Hong Kong) and Bank of Communications, Hong Kong Branch are required to give joint notice in the Gazette to that effect and also stating the next day appointed to be the appointed day or the day which was the appointed day.

### **4. Vesting of undertakings in Bank of Communications (Hong Kong)**

- (1) On the appointed day the undertakings are, by this Ordinance and without further act or deed, to be transferred to, and vest in, Bank of Communications

(Hong Kong) to the intent that Bank of Communications (Hong Kong) is to succeed to the undertakings as if in all respects Bank of Communications (Hong Kong) were the same person in law as Bank of Communications, Hong Kong Branch.

- (2) Where the transfer and vesting of any property and liabilities forming part of the undertakings is governed otherwise than by the laws of Hong Kong, Bank of Communications, Hong Kong Branch must, if Bank of Communications (Hong Kong) requires, as soon as is practicable after the appointed day, take all necessary steps for securing the effective transfer and vesting of those property and liabilities in Bank of Communications (Hong Kong) and, pending the transfer and vesting, hold any of those property and liabilities in trust absolutely for Bank of Communications (Hong Kong) from the appointed day until the transfer and vesting is effective.

## **5. Trust property and wills**

- (1) Any property vested or deemed to be vested in Bank of Communications (Hong Kong) by this Ordinance which immediately before the appointed day was held by Bank of Communications, Hong Kong Branch, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or other instrument (whether originally appointed in that capacity or not, and whether appointed under hand or seal, or by order of any court or otherwise), or as executor of the will, or administrator of the estate, of a deceased person or as judicial trustee appointed by order of any court, or in any other fiduciary capacity, is, on and from the appointed day, to be held by Bank of Communications (Hong Kong) alone or, as the case requires, jointly with any other person, in the same capacity on the trusts, and

with and subject to the powers, provisions and liabilities, applicable to them respectively.

- (2) Any existing instrument or order of any court under or by which any property forming part of the undertakings became vested in Bank of Communications, Hong Kong Branch, in any fiduciary capacity referred to in subsection (1) (including in the case of a will any grant of probate of the will), and any provision in that instrument or order, or any existing contract or arrangement, for the payment to, or retention by, Bank of Communications, Hong Kong Branch of remuneration for its services in any fiduciary capacity, is, on and from the appointed day, to be construed and have effect, so far as the context permits, as if for any reference in the instrument, order, contract or arrangement to Bank of Communications, Hong Kong Branch not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, Bank of Communications, Hong Kong Branch, there were substituted a reference to Bank of Communications (Hong Kong) and this subsection does not prevent Bank of Communications (Hong Kong) from varying the remuneration or scale of fees payable in accordance with the terms of the instrument, order, contract or arrangement.
- (3) Any will made before the appointed day which has not been proved in Hong Kong before the appointed day, and any will made on or after the appointed day, being a will forming part of the undertakings which appoints Bank of Communications, Hong Kong Branch to be an executor, trustee or recipient of any property as trustee, is, on and from the appointed day, to be construed and have effect as if for any reference in that will to Bank of Communications, Hong Kong Branch as the executor, trustee or recipient or otherwise in connection with that

appointment, not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, Bank of Communications, Hong Kong Branch, there were substituted a reference to Bank of Communications (Hong Kong).

- (4) No testamentary gift is adeemed only because of the operation of any of the provisions of this Ordinance.

## 6. Supplementary provisions

Without affecting any other provision of this Ordinance but subject to any provision of this Ordinance to the contrary effect, the following provisions of this section have effect in relation to the undertakings—

- (a) all existing contracts, agreements, insurance policies, options, novations, certificates, awards, land grants, conveyances, deeds, leases, licences, notices, permits, guarantees, documents granting or comprising any security interest, bonds, indemnities, mandates, instructions and other instruments and undertakings entered into by, made with, given to or by or addressed to Bank of Communications, Hong Kong Branch or (in so far as they are) entered into by, made with, given to or by or addressed to Bank of Communications and insurance policies in which Bank of Communications, Hong Kong Branch has an interest (and where the rights, liabilities, interest or any chose in action under or established by those instruments forms part of the undertakings) (whether alone or jointly with any other person and whether as principal or agent and whether in writing or not) are to be construed and have effect on and from the appointed day as if—

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- (i) Bank of Communications (Hong Kong) had been a party instead of Bank of Communications, Hong Kong Branch or Bank of Communications;
  - (ii) for any reference (however worded and whether express or implied) to Bank of Communications, Hong Kong Branch or Bank of Communications, there were substituted, as respects anything falling to be done on or after the appointed day, a reference to Bank of Communications (Hong Kong); and
  - (iii) for any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of Bank of Communications, Hong Kong Branch or Bank of Communications, there were substituted, as respects anything falling to be done on or after the appointed day, a reference to the directors of Bank of Communications (Hong Kong) or, as the case requires, to any director, officer or employee of Bank of Communications (Hong Kong) as Bank of Communications (Hong Kong) may appoint for that purpose or, in default of appointment, to the director, officer or employee of Bank of Communications (Hong Kong) who corresponds as nearly as may be to the first-mentioned director, officer or employee;
- (b) paragraph (a)(ii), subject to section 16, applies to any statutory provision, to any provision of any existing contract to which Bank of Communications, Hong Kong Branch or Bank of Communications was not a party (or any existing contract to which it was a party in respect of the excluded property and

liabilities) and to any provision of any other existing document (not being a contract or will) as it applies to a contract to which that paragraph applies;

- (c) any account between Bank of Communications, Hong Kong Branch and a customer is, on the appointed day, to 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 incidents including any account number as before; and each account is to be deemed for all purposes to be a single continuing account; and any existing contracts, agreements, insurance policies, options, novations, certificates, awards, land grants, conveyances, deeds, leases, licences, notices, permits, guarantees, documents granting or comprising any security interest, bonds, indemnities, mandates, instructions and other instruments and undertakings entered into by, made with, given to or by or addressed to Bank of Communications, Hong Kong Branch (whether alone or jointly with any other person and whether as principal or agent and whether in writing or not) are to be construed and have effect on and from the appointed day as if for any reference (however worded and whether express or implied) to the account between Bank of Communications, Hong Kong Branch and a customer, there were substituted, as respects anything falling to be done on or after the appointed day, and so far as the context permits, a reference to the single continuing account between Bank of Communications (Hong Kong) and that customer; and nothing in this Ordinance affects any right of Bank of Communications (Hong Kong) or of any



customer to vary the conditions or incidents subject to which any account is kept;

- (d) any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent (whether in writing or not and whether or not in relation to an account) given to or by Bank of Communications, Hong Kong Branch or (in so far as it is) given to or by Bank of Communications on behalf of Bank of Communications, Hong Kong Branch, either alone or jointly with any other person, is to apply and have effect, on and from the appointed day, as if given to or by Bank of Communications (Hong Kong) or to or by Bank of Communications (Hong Kong) jointly with any other person;
- (e) any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, Bank of Communications, Hong Kong Branch or Bank of Communications on behalf of Bank of Communications, Hong Kong Branch, or payable at any place of business of Bank of Communications, Hong Kong Branch, whether drawn, given, accepted or endorsed before, on or after the appointed day, is to have the same effect on and from the appointed day, as if it had been drawn on, or given to, or accepted or endorsed by Bank of Communications (Hong Kong), or were payable at the same place of business of Bank of Communications (Hong Kong);
- (f) the custody of any document or record, goods or other thing held by Bank of Communications, Hong Kong Branch as bailee is to pass to Bank of Communications (Hong Kong) on the appointed day,

and the rights and obligations of Bank of Communications, Hong Kong Branch under any contract of bailment relating to those document or record, goods or thing are to become the rights and obligations of Bank of Communications (Hong Kong) on the appointed day;

- (g) the following provisions of this paragraph apply in relation to security interests—
- (i) any security interest held immediately before the appointed day by Bank of Communications, Hong Kong Branch or Bank of Communications, or by a nominee or agent of or trustee for Bank of Communications, Hong Kong Branch or Bank of Communications, as security for the payment or discharge of any liability is, on and from the appointed day, to be held by Bank of Communications (Hong Kong), or, as the case requires, by that nominee or agent of or trustee for Bank of Communications (Hong Kong), and be available to Bank of Communications (Hong Kong) (whether for its own benefit or for the benefit of any other person) as security for the payment or discharge of that liability;
  - (ii) in relation to any security interest vested or deemed to be vested in Bank of Communications (Hong Kong) under this Ordinance and any liability secured by that security interest, Bank of Communications (Hong Kong) is to be entitled to the rights and priorities and be subject to the obligations and incidents to which Bank of Communications, Hong Kong Branch or Bank of

Communications would have been entitled and subject if it had continued to hold the security interest;

- (iii) without affecting subparagraph (ii), for any existing liability subsisting between Bank of Communications, Hong Kong Branch or Bank of Communications and Bank of Communications (Hong Kong), in respect of which Bank of Communications, Hong Kong Branch, Bank of Communications or Bank of Communications (Hong Kong), or a nominee or agent of or trustee for Bank of Communications, Hong Kong Branch, Bank of Communications or Bank of Communications (Hong Kong) holds a security interest, that liability is, for the enforcement or realization of that security interest, to be deemed to continue in effect despite the vesting of the undertakings in Bank of Communications (Hong Kong);
- (iv) any security interest referred to in subparagraph (i), (ii) or (iii) and which extends to future advances or future liabilities is, on and from the appointed day, to be available to Bank of Communications (Hong Kong) (whether for its own benefit or for the benefit of any other person) as security for the payment of future advances and payment or discharge of future liabilities to the same extent and in the same manner in all respects as future advances by, or future liabilities to, Bank of Communications, Hong Kong Branch, Bank of Communications or Bank of Communications (Hong Kong) were secured by that security interest immediately before the appointed day;

- (v) despite subparagraph (i), where immediately before the appointed day, any security interest would not be available to Bank of Communications (Hong Kong) as security for the payment or discharge of any liability owing to it or to Bank of Communications, Hong Kong Branch or Bank of Communications as security for the payment or discharge of any liability owing to it, that security interest would not become available to Bank of Communications (Hong Kong) as security for the payment or discharge of the liability on and from the appointed day because of this Ordinance, unless—
  - (A) the terms of that security interest expressly provide otherwise;
  - (B) Bank of Communications (Hong Kong) obtains the written consent of the person or persons who granted that security interest; or
  - (C) that security interest arises at general law;
- (vi) despite subparagraph (ii), where immediately before the appointed day, Bank of Communications (Hong Kong) would not, in respect of any liability owing to it, be entitled to the rights and priorities in relation to any security interest then in existence, or Bank of Communications, Hong Kong Branch or Bank of Communications would not, in respect of any liability owing to it, be entitled to the rights and priorities in relation to any security interest then in existence, Bank of Communications (Hong Kong) would not, in respect of the

liability, be entitled to those rights and priorities on and from the appointed day because of this Ordinance, unless—

- (A) the terms of that security interest expressly provide otherwise;
  - (B) Bank of Communications (Hong Kong) obtains the written consent of the person or persons who granted that security interest; or
  - (C) that security interest arises at general law;
- (h) the following provisions of this paragraph apply in relation to rights or liabilities—
- (i) where by this Ordinance any right or liability of Bank of Communications, Hong Kong Branch or Bank of Communications where it holds any right or liability on behalf of Bank of Communications, Hong Kong Branch or solely in relation to the undertakings becomes or is deemed to become a right or liability of Bank of Communications (Hong Kong), Bank of Communications (Hong Kong) and all other persons are, on and from the appointed day, to have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that right or liability as if it had at all times been a right or liability of Bank of Communications (Hong Kong); and any legal proceedings or application to any authority existing or pending immediately before the appointed day by or against Bank of Communications, Hong Kong Branch or Bank

- of Communications on behalf of Bank of Communications, Hong Kong Branch or solely in relation to the undertakings may be continued by or against Bank of Communications (Hong Kong);
- (ii) where any right or liability of Bank of Communications, Hong Kong Branch or Bank of Communications where it holds any right or liability on behalf of Bank of Communications, Hong Kong Branch or solely in relation to the undertakings was before the appointed day the subject of arbitral or legal proceedings to which Bank of Communications, Hong Kong Branch or Bank of Communications on behalf of Bank of Communications, Hong Kong Branch or solely in relation to the undertakings was a party, Bank of Communications (Hong Kong) is on and from the appointed day to be substituted for Bank of Communications, Hong Kong Branch or Bank of Communications as a party to those proceedings automatically, without the need for consent from any other party or from the arbitrator, judge or other authority;
- (i) any judgment or award obtained by or against Bank of Communications, Hong Kong Branch or Bank of Communications where it has obtained a judgment or award or had a judgment or award held against it on behalf of Bank of Communications, Hong Kong Branch or solely in relation to the undertakings and not fully satisfied before the appointed day is, on and from the appointed day, to the extent to which it is enforceable by or against Bank of Communications, Hong Kong Branch or Bank of Communications to

become enforceable by or against Bank of Communications (Hong Kong);

- (j) any court order which applies to Bank of Communications, Hong Kong Branch or to Bank of Communications on behalf of Bank of Communications, Hong Kong Branch or solely in relation to the undertakings is, on and from the appointed day, to apply to Bank of Communications (Hong Kong) instead of to Bank of Communications, Hong Kong Branch or Bank of Communications;
- (k) nothing in this Ordinance terminates or prejudicially affects the appointment, authority, rights or powers of any receiver or of any receiver and manager appointed by Bank of Communications, Hong Kong Branch or Bank of Communications, whether alone or jointly with any other person, before the appointed day; and
- (l) the Privacy Commissioner may, on and from the appointed day, exercise in respect of Bank of Communications (Hong Kong) any power under the Personal Data (Privacy) Ordinance (Cap. 486) which the Privacy Commissioner could have immediately before the appointed day exercised in respect of Bank of Communications, Hong Kong Branch in respect of a breach or alleged breach by Bank of Communications, Hong Kong Branch of that Ordinance or the data protection principles; but the transfer to, and vesting in, Bank of Communications (Hong Kong) by this Ordinance of the undertakings and any disclosure to Bank of Communications (Hong Kong) of any information in contemplation or as a result of the transfer and vesting do not

amount to a breach of any duty of confidentiality to which Bank of Communications, Hong Kong Branch is subject immediately before the appointed day or to a contravention by Bank of Communications (Hong Kong) or Bank of Communications, Hong Kong Branch of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

**7. Accounting treatment of Bank of Communications (Hong Kong) and Bank of Communications, Hong Kong Branch**

- (1) On and from the appointed day, by this Ordinance and despite the provisions of any other Ordinance—
  - (a) the undertakings are to be transferred to Bank of Communications (Hong Kong) at their carrying value in the accounts of Bank of Communications, Hong Kong Branch as stated in them immediately before the appointed day; and
  - (b) the amount, description and character of every reserve of Bank of Communications (Hong Kong) which forms part of or otherwise relates to the undertakings are to be the same in all respects as those of the corresponding existing reserve (or items of similar nature) of Bank of Communications, Hong Kong Branch immediately before the appointed day, and all enactments and rules of law in Hong Kong are to apply to or in respect of that reserve of Bank of Communications (Hong Kong) in the same manner in all respects as they applied to or in respect of the corresponding existing reserve (or items of similar nature) of Bank of Communications, Hong Kong Branch immediately before the appointed day.
- (2) Any reference in subsection (1)(b) to an existing reserve of Bank of Communications, Hong Kong Branch includes



any reserve or similar provision, irrespective of its name or designation (and whether the amount of it is positive or negative in nature), and any sums standing to the credit (or debit) of any profit and loss account.

## **8. Taxation and revenue matters**

- (1) For the purposes of the Inland Revenue Ordinance (Cap. 112), on and from the appointed day, Bank of Communications (Hong Kong) is to be treated as if it were the continuation of and the same person in law with regard to the undertakings as Bank of Communications, Hong Kong Branch.
- (2) Accordingly (and without affecting subsection (1)) a vesting or deemed vesting in Bank of Communications (Hong Kong) of any property or liability by this Ordinance does not constitute a sale or other divestiture of or a change in the nature of that property or liability for any purpose under the Inland Revenue Ordinance (Cap. 112).
- (3) The profits or losses of Bank of Communications, 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 Bank of Communications, Hong Kong Branch which are chargeable to tax under Part 4 of the Inland Revenue Ordinance (Cap. 112) for the year of assessment in which the appointed day occurs.
- (4) The profits or losses arising from the undertakings transferred to Bank of Communications (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 Bank of Communications (Hong Kong) which are

chargeable to tax under Part 4 of the Inland Revenue Ordinance (Cap. 112) for the year of assessment in which the profits or losses arise.

- (5) Where the operation of subsection (1), (2), (3) or (4) may result in tax relief by deduction, depreciation allowance or other means given to both Bank of Communications, Hong Kong Branch and Bank of Communications (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 Bank of Communications, Hong Kong Branch or Bank of Communications (Hong Kong) as the Commissioner of Inland Revenue thinks fit having regard to all relevant facts including the intended effect of this Ordinance.

## **9. Contracts of employment**

- (1) Section 6(a) applies to a contract for the employment of any person who is solely engaged in the undertakings; and employment with Bank of Communications, Hong Kong Branch and Bank of Communications (Hong Kong) under that contract is deemed for all purposes to be a single continuing employment.
- (2) No director, secretary or auditor of Bank of Communications, Hong Kong Branch would become a director, secretary or auditor of Bank of Communications (Hong Kong) only because of this Ordinance.

## **10. Mandatory provident fund scheme**

The deeds, rules and documents constituting or relating to the mandatory provident fund scheme established in Hong Kong and known as the BCOM Joyful Retirement MPF Scheme (交通銀行愉盈退休強積金計劃), and the contributions payable by Bank of Communications, Hong Kong Branch, are, on and

from the appointed day, to be construed and have effect, so far as the context permits, as if for any reference in the deeds, rules or documents to Bank of Communications, Hong Kong Branch, there were substituted a reference to Bank of Communications (Hong Kong) in respect of officers or employees of Bank of Communications, Hong Kong Branch who are members of that scheme and who become officers or employees of Bank of Communications (Hong Kong) only because of this Ordinance.

#### **11. Waiver of prohibition of merger**

- (1) Any provision contained in any contract, agreement or other document to which Bank of Communications, Hong Kong Branch or Bank of Communications (Hong Kong) is a party or to which Bank of Communications is a party but the rights, liabilities, interest or any chose in action under or established by that contract, agreement or other document forms part of the undertakings which prohibits or has the effect of prohibiting the transfer and vesting or deemed transfer and vesting of the undertakings to and in Bank of Communications (Hong Kong), is deemed to have been waived.
- (2) Any provision contained in any (2) contract, agreement or other document to the effect that a breach of contract or a default would occur or be deemed to occur as a result of the transfer and vesting or deemed transfer and vesting of the undertakings to and in Bank of Communications (Hong Kong), and to which Bank of Communications, Hong Kong Branch or Bank of Communications (Hong Kong) is a party or to which Bank of Communications is a party but the rights, liabilities, interest or any chose in action under or established by that contract, agreement or other document forms part of the undertakings, is deemed to have been waived.

**12. Evidence: books and documents**

- (1) All books and other documents which would, before the appointed day, have been evidence in respect of any matter for or against Bank of Communications, Hong Kong Branch or Bank of Communications would be admissible in evidence in respect of the same matter for or against Bank of Communications (Hong Kong) so far as they relate to the undertakings.
- (2) In this section—  
*documents* (文件) has the meaning given by section 46 of the Evidence Ordinance (Cap. 8).

**13. Part III of Evidence Ordinance**

- (1) On and from the appointed day, Part III of the Evidence Ordinance (Cap. 8) is to apply to the banker's records of Bank of Communications, Hong Kong Branch vested or deemed to be vested in Bank of Communications (Hong Kong) by this Ordinance, and to entries made in those records before the appointed day, as if those records were the records of Bank of Communications (Hong Kong).
- (2) For the purposes of section 20 of the Evidence Ordinance (Cap. 8), banker's records which are deemed to have become the banker's records of Bank of Communications (Hong Kong) because of this Ordinance are deemed to have been the ordinary banker's records of Bank of Communications (Hong Kong) at the time of the making of an entry in them which purports to have been made before the appointed day, and that entry is deemed to have been made in the usual and ordinary course of business.

- (3) For the purposes of sections 40 and 41 of the Evidence Ordinance (Cap. 8), documents previously in the custody or control of Bank of Communications, Hong Kong Branch or Bank of Communications that relate to the undertakings are deemed to be documents previously in the custody or control of Bank of Communications (Hong Kong).
- (4) In this section—  
*banker's records* (銀行紀錄) has the meaning given by section 2 of the Evidence Ordinance (Cap. 8).

#### 14. Evidence of transfer and vesting

- (1) The production of a Government Printer's copy of this Ordinance is, for all purposes, conclusive evidence of the transfer and vesting or deemed transfer and vesting of the undertakings or any part of the undertakings to and in Bank of Communications (Hong Kong) under this Ordinance.
- (2) Without affecting subsection (1)—
- (a) a Government Printer's copy of this Ordinance, together with evidence of publication of notice of the appointed day—
- (i) operates for all purposes, in relation to any registered securities transferred to, and vested or deemed to be vested in, Bank of Communications (Hong Kong) by this Ordinance, as a duly executed instrument of transfer in respect of the transfer of those registered securities from Bank of Communications, Hong Kong Branch to Bank of Communications (Hong Kong); and

- (ii) further together with a certified copy of any resolution or certificate under paragraph (e) of the definition of *excluded property and liabilities* in section 2(1), is sufficient evidence that the property and liabilities specified by that resolution or certificate are excluded property and liabilities;
- (b) any deed or other document made or executed on or after the appointed day, by which Bank of Communications (Hong Kong), Bank of Communications, Hong Kong Branch or Bank of Communications, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by Bank of Communications, Hong Kong Branch or Bank of Communications immediately before the appointed day and forming part of the undertakings, whether alone or jointly with any other person, is sufficient evidence that the interest of Bank of Communications, Hong Kong Branch or Bank of Communications in that property is vested or deemed to be vested in Bank of Communications (Hong Kong) under this Ordinance;
- (c) where there is any other transaction or purported transaction by Bank of Communications (Hong Kong), Bank of Communications, Hong Kong Branch or Bank of Communications on or after the appointed day in connection with, or in relation to, any property or liabilities which were property or liabilities of Bank of Communications, Hong Kong Branch or Bank of Communications immediately before the appointed day and forming part of the

undertakings, it is deemed in favour of any other party to the transaction, or any person claiming through or under that other party, that Bank of Communications (Hong Kong) has full power and authority for that transaction as if the property or liabilities were vested or deemed to be vested in it under this Ordinance; and

- (d) a certificate given by or on behalf of Bank of Communications (Hong Kong) at any time that any property or liabilities specified in the certificate (which property or liabilities immediately before the appointed day were the property or liabilities of Bank of Communications, Hong Kong Branch or Bank of Communications) are or are not deemed to be vested in Bank of Communications (Hong Kong) under this Ordinance is conclusive evidence for all purposes of the fact certified.
- (3) Nothing in subsection (2)(c) or (d) affects the liability of Bank of Communications (Hong Kong) and Bank of Communications, Hong Kong Branch or Bank of Communications to one another in respect of anything done, or purporting to have been done, by any of them in connection with, or in relation to, any property or liabilities.
- (4) Nothing in this section applies to any property and liabilities falling within section 4(2).
- (5) In this section—
- convey* (轉易) includes mortgage, charge, lease, assent, vest by vesting declaration or vesting instrument, disclaim, release or otherwise assure;

*registered securities* (註冊證券) means shares, stocks, debentures, loans, bonds, units of a unit trust scheme or other shares of the investments subject to the trusts of that scheme, and other securities of any description which are transferable and the holders of which are entered in a register (whether maintained in Hong Kong or elsewhere).

## 15. Interests in land

- (1) The vesting or deemed vesting in Bank of Communications (Hong Kong) of an interest in land by this Ordinance—
  - (a) does not constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of section 53(4)(a) or (7)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);
  - (b) does not constitute an assignment or underlease of, or an agreement to assign or underlet, that interest for the purposes of section 6(1)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);
  - (c) does not operate to merge any leasehold interest in the reversion expectant on it;
  - (d) does not constitute an assignment, transfer, devolution or parting with possession of, dealing with or other disposition of that interest for the purposes of any provision contained in any instrument concerning or affecting that interest;
  - (e) does not operate as a breach of covenant or condition against alienation;
  - (f) does not give rise to any forfeiture, damages or other right of action;



- (g) does not invalidate or discharge any contract or security interest; and
  - (h) does not extinguish, affect, vary, diminish or postpone any priority of that interest, whether under the Land Registration Ordinance (Cap. 128), at law or in equity.
- (2) All existing registrations of any instruments relating to interests in land in the name of Bank of Communications, Hong Kong Branch, or Bank of Communications (whether alone or jointly with any other person) vested or deemed to be vested in Bank of Communications (Hong Kong) by this Ordinance immediately before the appointed day are to be construed and have effect on and from the appointed day as if the name “Bank of Communications (Hong Kong) Limited (交通銀行(香港)有限公司)” had been entered on the land register instead of the name of Bank of Communications, Hong Kong Branch or Bank of Communications.
- (3) To enable Bank of Communications (Hong Kong) to complete title, if thought fit, to any interests in land vested or deemed to be vested in it by this Ordinance by notice of title, deed, instrument or otherwise, or to deduce title, this Ordinance is deemed to be, and may be used as, an assignment, conveyance, transfer or instrument of a general disposition of those interests in land in favour of Bank of Communications (Hong Kong), and the production of a Government Printer’s copy of this Ordinance and, in the case of premises operated by Bank of Communications, Hong Kong Branch 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 and which situate on land that is leased to Bank

of Communications, Hong Kong Branch or Bank of Communications immediately before the appointed day, together with a certified copy of the list of those premises, is conclusive evidence for proving or deducing title in favour of Bank of Communications (Hong Kong).

- (4) To enable the public to be informed of this Ordinance through the public records at the Land Registry in relation to the interests in land affected by this Ordinance, Bank of Communications (Hong Kong) is required to register in the Land Registry a Government Printer's copy of this Ordinance and, in the case of premises operated by Bank of Communications, Hong Kong Branch in Hong Kong 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 and which situate on land that is leased to Bank of Communications, Hong Kong Branch or Bank of Communications immediately before the appointed day, together with a certified copy of the list of those premises, against a property the interest in which has been vested or deemed to be vested in Bank of Communications (Hong Kong) by this Ordinance in respect of the vesting or deemed vesting of all interests in land of Bank of Communications, Hong Kong Branch or Bank of Communications in Bank of Communications (Hong Kong) by this Ordinance, other than a lease at rack rent for any term not exceeding 3 years and which has not been registered in the Land Registry before the appointed day.
- (5) Nothing in this section exempts Bank of Communications (Hong Kong), Bank of Communications, Hong Kong Branch and Bank of Communications from the Stamp Duty Ordinance (Cap. 117).

**16. Saving for other enactments**

Nothing in this Ordinance exempts Bank of Communications (Hong Kong), Bank of Communications, Hong Kong Branch, Bank of Communications or any subsidiary of Bank of Communications (Hong Kong), Bank of Communications, Hong Kong Branch or Bank of Communications from any enactment regulating the carrying on of the business of any of them.

**17. Saving for companies**

Nothing in this Ordinance affects the powers of Bank of Communications (Hong Kong) to alter its articles of association or to dispose of, or deal with, its property, security interests or liabilities or to carry on or discontinue any part of its business; and nothing in this Ordinance affects the powers of Bank of Communications to alter its memorandum and articles of association or to dispose of, or deal with, its property, security interests or liabilities before the appointed day.

**18. Saving**

Nothing in this Ordinance shall affect or be deemed to 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 this Ordinance and those claiming by, from or under them.