

## INFORMATION NOTE

### LEGISLATIVE COUNCIL PANEL ON FINANCIAL AFFAIRS MEETING ON 4 NOVEMBER 2002 DAO HENG BANK LIMITED (MERGER) BILL

#### Introduction

1. This purpose of this note is to inform Members of the proposed Dao Heng Bank Limited (Merger) Bill and to solicit Members' views. A copy of the draft Bill is attached to this note as Appendix A.

#### General

2. It is proposed that the Bill will be introduced as a private Member's bill. The Bill will be sponsored by Dr. Hon. David Li Kwok-po, GBS, JP.

#### Bank Merger

3. The Bill provides for the merger of Overseas Trust Bank, Limited (*OTB*) and DBS Kwong On Bank Limited (*DKOB*) and together with OTB, the *Transferring Banks*) with Dao Heng Bank Limited (*Dao Heng Bank*). The intention of the merger is to allow Dao Heng Bank to consolidate its banking business with the Transferring Banks to increase efficiency through economies of scale. All of the banks are members of the DBS Group which is headed by The Development Bank of Singapore Limited.

#### Background

4. In a number of jurisdictions, such as the United States, Japan and Switzerland, two banks can merge with one another by way of "universal succession". However Hong Kong company law does not have such a concept as universal succession. Accordingly bank mergers in Hong Kong may only be effected either by transfer of all property and liabilities by way of novation or assignment or by introducing a Bill to the Legislative Council which transfers all property and liabilities of the merging bank which are governed by Hong Kong law. Given the large number of outstanding agreements between the Transferring Banks and their customers, it is not practical to transfer such assets and liabilities by way of novation and assignment to Dao Heng Bank.

#### Envisaged Benefits

5. It is the Government's stated policy to support consolidation of the banking sector in Hong Kong, which should improve its competitiveness and contribute to systemic stability in the longer term. As part of this policy, the Administration has previously supported bank mergers where reasonable proposals are submitted for consolidation. This is, however, always subject to the overriding aim of promoting the stability of the banking system and providing an appropriate degree of protection to depositors in the merged institutions and to depositors generally.

## The Bill

6. The purpose of the Bill is to transfer the undertakings of the Transferring Banks to Dao Heng Bank. All of the banks involved in the merger are licensed under the Banking Ordinance and are incorporated in Hong Kong. In conjunction with the merger under the Bill, the Transferring Banks will seek the revocation of their banking licences by the Monetary Authority pursuant to the Banking Ordinance. None of the banks involved in the merger are currently listed on The Stock Exchange of Hong Kong Limited.

7. The Bill provides for the vesting of the undertakings of the Transferring Banks in Dao Heng Bank on the appointed day. Except for certain excluded property, all of the business of the Transferring Banks will form part of the undertakings vested in Dao Heng Bank by the Bill. Certain property (for example, the common seal, Companies Ordinance documents and the issued share capital) is excluded only for the purpose of complying with the Companies Ordinance and no discretion is given to Dao Heng Bank or the Transferring Banks to exclude any property or liabilities from the vesting of undertakings.

8. The key provisions of the proposed Bill will be similar to those of the recently enacted merger bills and are summarised in the following paragraphs.

- (a) **Clause 3** provides that the board of directors of Dao Heng Bank may determine an appointed day upon which the merger will take effect and that such appointed day must be notified by both the Transferring Banks and Dao Heng Bank in the Gazette.
- (b) **Clause 4** provides that Dao Heng Bank's, DKOB's and OTB's names will be changed to "[•]", "[•]" and "[•]"<sup>1</sup> respectively on the appointed day. In addition, the Transferring Banks authorized and issued share capital will be reduced on the appointed day, and their banking licences be revoked on a day determined by the HKMA and notified in the Gazette. The current intention is that this day will coincide with the appointed day upon which the merger will take effect.
- (c) **Clause 5** is the main transfer and vesting provision in the Bill. It provides that the undertakings of the Transferring Banks (not including the "excluded property") shall transfer to and vest in Dao Heng Bank as if Dao Heng Bank were the same person in law as the Transferring Banks upon the appointed day.
- (d) **Clause 6** deals with property which, before the merger, is held by a Transferring Bank in a capacity as a trustee. It provides that in such case, the relevant document should be read as if references to the Transferring Bank were references to Dao Heng Bank.
- (e) **Clauses 7(a) to (k)** provide that all contracts and agreements made with, given to or by or addressed to the Transferring Banks (other than excluded property)

---

<sup>1</sup> The new names of the banks to be confirmed by the board of the Development Bank of Singapore Limited.

shall, after the merger takes effect, be construed as if Dao Heng Bank had been the original party instead of the Transferring Banks and, accordingly, all references to the Transferring Banks must be construed as if they were to Dao Heng Bank. **Clauses 7(a) to (k)** also provide for accounts, negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgements to be transferred to Dao Heng Bank upon the appointed day. **Clauses 7(g)(v) and (vi)** are provisions which seek to reflect previous concerns in respect of other bank mergers expressed by Members of the Legislative Council regarding the possible increase of security or charges over customers' assets as a result of the merger. These provisions seek to ensure that Dao Heng Bank's existing charges and security interests will not be expanded over assets previously held by the Transferring Banks of a common Dao Heng Bank/DKOB/OTB customer.

- (f) **Clause 7(1)** provides that the transfer of personal data from the Transferring Banks to Dao Heng Bank 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 Dao Heng Bank any power which he could, before the merger, have exercised in respect of the Transferring Banks.
- (g) **Clause 8** provides for the accounting treatment of Dao Heng Bank following the merger. It provides that the balance sheets and profit and loss accounts of the Transferring Banks and Dao Heng Bank for the accounting period of each company in which the appointed day falls shall be prepared in all respects as if the undertakings had vested in Dao Heng Bank on the first day of such accounting period of Dao Heng Bank.
- (h) **Clause 9** provides for the taxation arrangements following the merger. It also provides that only a single profits tax computation shall be prepared by Dao Heng Bank in respect of the profits and losses of the Transferring Banks and Dao Heng Bank in respect of the year of assessment the basis period for which the transfer of the undertakings takes place. **Clause 9** is intended to have similar effect as the provisions dealing with taxation matters in previous bank merger ordinances. The effect of this provision is consistent with Government policy on taxation, as stated in the context of recently enacted bank merger ordinances.
- (i) **Clause 10** provides that, in respect of all the Transferring Banks' contracts of employment with those employees who are transferred by the Bill to Dao Heng Bank at the merger, such contracts shall be deemed for all purposes to be a single continuing employment. **Clause 10** also provides that no directors, secretary or auditor of the Transferring Banks shall, by virtue of the merger only, automatically become a director, secretary or auditor of Dao Heng Bank.
- (j) **Clause 11** ensures that the Transferring Banks' employees who are members of pension fund schemes of the Transferring Banks shall continue to be members of these schemes after the transfer of the Transferring Banks'

undertakings to Dao Heng Bank. It also ensures that former employees of the Transferring Banks and existing employees of Dao Heng Bank shall continue to enjoy the same rights following the transfer as before under their respective pension schemes and that the transfer by virtue of the Bill shall not automatically bestow any additional entitlements to such employees.

- (k) **Clause 12** prevents the merger of the Transferring Banks with Dao Heng Bank constituting an event of default or a termination event in a contract or agreement to which a Transferring Bank or Dao Heng Bank or their respective subsidiaries is a party.
- (l) **Clauses 13 to 15** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against the Transferring Banks which, transferred by the Bill, becomes admissible in evidence after the merger in respect of the same matter for or against Dao Heng Bank, including for the purposes of the vesting, custody and control of banker's records under the Evidence Ordinance.
- (m) **Clause 16** deals with the effect of the merger on interests in land in Hong Kong held by the Transferring Banks and provides that the vesting of the Transferring Banks' interests in land in Dao Heng Bank pursuant to the merger does not constitute an acquisition, assignment, transfer or parting with possession under the Landlord and Tenant (Consolidation) Ordinance. **Clause 16** also provides that the vesting in Dao Heng Bank of the Transferring Banks' 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 16** exempts either Dao Heng Bank or the Transferring Banks from the provisions of the Stamp Duty Ordinance.
- (n) **Clause 17** states that nothing in the Bill shall exempt either the Transferring Banks or Dao Heng Bank from any of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.
- (o) **Clause 18** provides that the Bill does not prevent Dao Heng Bank from amending its memorandum and articles of association or dealing with its property or business generally. **Clause 18** also provides that nothing in the Bill prevents the Transferring Banks from altering its memorandum and articles of association or dealing with its property generally before the appointed day.
- (p) **Clause 19** provides that nothing in the Bill once enacted shall affect the rights of the Central Authorities or the Government under the Basic Law and other laws.

## **Taxation**

9. As mentioned above, **Clauses 8 and 9** have the effect of deeming Dao Heng Bank as one and the same as the Transferring Banks in law; and allowing any profits and losses of the Transferring Banks to be treated as the profits and losses of Dao Heng Bank from the beginning of the financial year of the merger.

10. In the recently enacted merger bills, the Government has allowed the merged entity, for tax assessment purpose, to carry forward any losses accumulated by any of the merging entities. As neither of the Transferring Banks carries any accumulated losses for tax assessment purposes, the Bill should not result in any loss of Government's revenue.

### **Public Consultation**

11. The Hong Kong Monetary Authority, the Financial Services and the Treasury Bureau, the Department of Justice, the Commissioner of Inland Revenue, the Companies Registrar, the Land Registrar, the Privacy Commissioner for Personal Data, the Securities and Futures Commission and the Mandatory Provident Authority have been consulted in relation to the Bill and have provided their comments (if any).

### **Legislative Timetable**

12. Subject to the obtaining of the President's Ruling and the Chief Executive's consent (if necessary), we aim to publish the Bill in the Gazette in December 2002 and introduce it into the Legislative Council in early 2003.

### **Enquiries**

13. Any enquiries about this brief can be directed to Mr. Andrew Burns at the Office of Legislative Councillor, Dr. Hon. David Li Kwok-po, GBS, JP at telephone number 2582 3499 or fax number 2526 1909.

**Dr. Hon. David Li Kwok-po, GBS, JP**

**22 October 2002**

DAO HENG BANK LIMITED (MERGER) BILL

CONTENTS

| Clause |  | Page |
|--------|--|------|
| 1.     | Short title  | 2    |
| 2.     | Interpretation   | 3    |
| 3.     | Notice of appointed day  | 6    |
| 4.     | Change of name, reduction of capital and revocation of banking licence | 6    |
| 5.     | Vesting of the undertakings in Dao Heng Bank                           | 9    |
| 6.     | Trust property and wills   | 9    |
| 7.     | Supplementary provisions   | 11   |
| 8.     | Accounting treatment of Dao Heng Bank and the transferring banks       | 21   |
| 9.     | Taxation and revenue matters   | 24   |
| 10.    | Contracts of employment  | 25   |
| 11.    | Pensions, provident funds and gratuity benefits                        | 26   |
| 12.    | Waiver of prohibition of merger  | 26   |
| 13.    | Evidence: books and documents  | 27   |
| 14.    | Part III of Evidence Ordinance (Cap. 8)                                | 27   |
| 15.    | Evidence of vesting and transfer                                       | 28   |
| 16.    | Interests in land  | 31   |
| 17.    | Saving for enactments concerning banking institutions                  | 33   |
| 18.    | Saving for companies   | 34   |
| 19.    | Saving   | 34   |

A BILL

To

Provide for the vesting in Dao Heng Bank Limited of the undertakings of DBS Kwong On Bank Limited and Overseas Trust Bank, Limited and for other related purposes.

**Preamble**

WHEREAS -

- (a) Dao Heng Bank Limited (道亨銀行有限公司) (hereinafter called "Dao Heng Bank") is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank licensed under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong and elsewhere;
- (b) DBS Kwong On Bank Limited DBS廣安銀行有限公司 (hereinafter called "DBS Kwong On Bank") is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank licensed under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong;
- (c) Overseas Trust Bank, Limited (海外信託銀行有限公司) (hereinafter called "Overseas Trust Bank") is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a bank licensed

under the Banking Ordinance (Cap. 155) carrying on the business of banking in Hong Kong;

- (d) Dao Heng Bank, DBS Kwong On Bank and Overseas Trust Bank are members of the DBS Group;
- (e) for the better conduct of the businesses of the DBS Group, it is expedient that the respective undertakings of Dao Heng Bank, DBS Kwong On Bank and Overseas Trust Bank be merged and that such merger should occur by means of a transfer of the undertakings of DBS Kwong On Bank and Overseas Trust Bank to Dao Heng Bank; and
- (f) in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of DBS Kwong On Bank and Overseas Trust Bank, it is expedient that the said undertakings be transferred to Dao Heng Bank by this Ordinance without interference with the conduct and continuity of the respective businesses of Dao Heng Bank, DBS Kwong On Bank and Overseas Trust Bank.

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Dao Heng Bank Limited (Merger) Ordinance.

---



**2. Interpretation**

(1) In this Ordinance, unless the subject or context otherwise requires -

"appointed day" (指定日期) means such day as may be appointed pursuant to section 3;

"customer" (客戶) means any person having a banking account or other dealing, transaction or arrangement with a transferring bank;

"Dao Heng Bank" (道亨銀行) means Dao Heng Bank Limited (道亨銀行有限公司), which name will be changed to [new name of Dao Heng Bank] on the appointed day;

"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);

"DBS Group" (DBS集團) means The Development Bank of Singapore Limited and its subsidiaries;

"DBS Kwong On Bank" (DBS廣安銀行) means DBS Kwong On Bank Limited DBS廣安銀行有限公司;

"excluded property" (除外財產) means -

- (a) the common seal of each of the transferring banks;
- (b) documents required to be kept by the transferring banks pursuant to the Companies Ordinance (Cap. 32);

(c) the issued share capital of DBS Kwong On Bank represented by the paid-up shares beneficially owned by DBS Group Holdings (Hong Kong) Ltd.;

(d) the issued share capital of Overseas Trust Bank represented by the paid-up shares beneficially owned by Dao Heng Bank;

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

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

"Overseas Trust Bank" (海外信託銀行) means Overseas Trust Bank, Limited (海外信託銀行有限公司);

"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);

"property" (財產) means property and assets of every description wheresoever situate and rights of every description (whether present or future, actual or contingent), and includes property held on trust or in a fiduciary capacity and security interests, benefits and powers of every description but does not include the excluded property;

"Registrar of Companies" (公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32);

"security interest" (抵押權益) includes a mortgage or charge (whether legal or equitable and including any sub-mortgage), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment by way of security, indemnity, right of set-off, flawed asset arrangement, agreement or undertaking (whether in writing or not) or other means (in each case made, granted, arising or subsisting under any applicable law) of securing payment or discharge of a debt or liability (whether present or future, actual or contingent);

"subsidiary" (附屬公司) has the meaning assigned to it by section 2 of the Companies Ordinance (Cap. 32);

"transferring banks" (各移轉銀行) means DBS Kwong On Bank and Overseas Trust Bank, and a reference to a "transferring bank" is a reference to one of the transferring banks;

"undertakings" (業務) means the businesses and all existing property, reserves and liabilities of the transferring banks of whatsoever nature, other than the excluded property;

"will" (遺囑) includes a codicil and any other testamentary writing.

(2) Any reference in this Ordinance to property or liabilities of a transferring bank is a reference to property or liabilities to which the transferring bank is for the time being entitled or subject (whether beneficially or in any fiduciary capacity), wherever such property or liabilities are situated or

arise and whether or not capable of being transferred or assigned by the transferring bank, and whether the transferring bank is entitled to such property or subject to such 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 shall be deemed to be mentioned herein.

**3. Notice of appointed day**

(1) The directors of Dao Heng Bank may appoint a day for the purposes of this Ordinance.

(2) Dao Heng Bank and the transferring banks shall give joint notice in the Gazette stating the day so appointed save that, in the event that such day proves not to be the appointed day for any reason, Dao Heng Bank and the transferring banks shall give joint notice in the Gazette to that effect and shall again give joint notice in the Gazette stating the next day so appointed or, as the case may be, the day which was the appointed day.

**4. Change of name, reduction of capital and revocation of banking licence**

(1) On the appointed day, by virtue of this Ordinance -

(a) the name of Dao Heng Bank shall, in accordance with this section, be changed to [new name of Dao Heng Bank];

- (b) the names of DBS Kwong On Bank and Overseas Trust Bank shall, in accordance with this section, be respectively changed to [new name of DBS Kwong On Bank] and [new name of Overseas Trust Bank];
- (c) the authorized and issued share capital of DBS Kwong On Bank shall be reduced to \$[ ] comprising [ ] ordinary shares of \$2 each and [ ] ordinary shares of \$2 each shall be cancelled;
- (d) the authorized and issued share capital of Overseas Trust Bank shall be reduced to \$[ ] comprising [ ] ordinary shares of \$1.25 each and [ ] ordinary shares of \$1.25 each shall be cancelled; and
- (e) the banking licence of each of the transferring banks shall, in accordance with Part V of the Banking Ordinance (Cap. 155), be revoked on and from a day to be appointed by the Monetary Authority which day shall be published in the Gazette.

(2) Not later than 7 days before the appointed day, DBS Kwong On Bank shall deliver to the Registrar of Companies a copy of this Ordinance together with a minute, signed by a director or the secretary of DBS Kwong On Bank confirming the reduction of share capital and cancellation of shares referred to in subsection (1).

(3) Not later than 7 days before the appointed day, Overseas Trust Bank shall deliver to the Registrar of Companies a copy of this Ordinance together with a minute, signed by a director or the secretary of Overseas Trust Bank confirming the reduction of share capital and cancellation of shares referred to in subsection (1).

(4) The Registrar of Companies shall, pursuant to this Ordinance, register the copies of the Ordinance and the minutes delivered to him pursuant to subsections (2) and (3) and on the appointed day shall -

- (a) enter the new names of Dao Heng Bank and the transferring banks in the register in place of their former names;
- (b) issue to Dao Heng Bank a certificate of incorporation on change of name stating Dao Heng Bank's new name;
- (c) issue to DBS Kwong On Bank a certificate of incorporation on change of name stating DBS Kwong On Bank's new name;
- (d) issue to Overseas Trust Bank a certificate of incorporation on change of name stating Overseas Trust Bank's new name; and
- (e) certify under his hand the registration of the Ordinance and the minutes which certificates shall be conclusive evidence of the reduction of the authorized and issued share capital of each of the transferring banks.

**5. Vesting of the undertakings  
in Dao Heng Bank**

(1) On the appointed day the undertakings shall, by virtue of this Ordinance and without further act or deed, be transferred to, and vest in, Dao Heng Bank to the intent that Dao Heng Bank shall succeed to the whole undertakings as if in all respects Dao Heng Bank were the same person in law as the relevant transferring bank.

(2) Where the transfer and vesting of any property and liabilities situate in any country, territory or place outside Hong Kong and forming part of the undertakings is governed otherwise than by the laws of Hong Kong, the transferring bank in question shall, if Dao Heng Bank so requires, so soon as is practicable after the appointed day, take all necessary steps for securing the effective transfer and vesting thereof in Dao Heng Bank and, pending such transfer and vesting, the transferring bank in question shall hold any such property in trust absolutely for Dao Heng Bank.

**6. Trust property and wills**

(1) Any property vested or deemed to be vested in Dao Heng Bank by virtue of this Ordinance which immediately before the appointed day was held by a transferring bank, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement, will or other instrument (whether originally so appointed 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, shall, on and from the appointed day, be held by Dao Heng Bank alone or, as the case may be, jointly with such other person, in the same capacity upon the trusts, and with and subject to the powers, provisions and liabilities, applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property forming part of the undertakings became vested in a transferring bank, in any such fiduciary capacity as is referred to in subsection (1) (including in the case of a will any grant of probate thereof), and any provision in such instrument or order, or any existing contract or arrangement, for the payment to, or retention by, a transferring bank of remuneration for its services in any such fiduciary capacity, shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to the transferring bank not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, the transferring bank, there were substituted a reference to Dao Heng Bank provided always that this subsection shall not prevent Dao Heng Bank from varying the remuneration or scale of fees payable in accordance with the terms of the relevant instrument or order.



(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 a transferring bank to be an executor, trustee or recipient of any property as trustee, shall, on and from the appointed day, be construed and have effect as if for any reference therein to such transferring bank as such executor, trustee or recipient or otherwise in connection with such appointment, not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, such transferring bank, there were substituted a reference to Dao Heng Bank.

(4) No testamentary gift shall be deemed by reason only of the operation of any of the provisions of this Ordinance.

**7. Supplementary provisions**

Without prejudice to the generality of any other provision of this Ordinance but subject to any provision of this Ordinance to the contrary effect, the following provisions of this section shall have effect other than in relation to the excluded property -

- (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 a transferring bank (whether alone or with any other person and whether as principal or agent and whether in writing or not), shall be construed and have effect on and from the appointed day as if -

- (i) Dao Heng Bank had been a party thereto instead of such transferring bank;
- (ii) for any reference (however worded and whether express or implied) to such transferring bank there were substituted, as respects anything falling to be done on or after the appointed day, a reference to Dao Heng Bank; and
- (iii) any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of such transferring bank were, as respects anything falling to be done on or after the appointed day, a reference to the directors of Dao Heng Bank or, as the case may require, to such director, officer or employee of Dao Heng Bank as Dao Heng Bank may appoint for that purpose or, in default of appointment, to

the director, officer or employee of Dao Heng Bank who corresponds as nearly as may be to the first-mentioned director, officer or employee.

- (b) Paragraph (a) (ii) shall, subject to the provisions of section 17, apply to any statutory provision, to any provision of any existing contract to which a transferring bank was not a party and to any provision of any other existing document (not being a contract or a will) as they apply to a contract to which that paragraph applies.
- (c) Any account between a transferring bank and a customer shall, on the appointed day, be transferred to Dao Heng Bank and become an account between Dao Heng Bank and such customer subject to the same conditions and incidents as theretofore; and each such account shall 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 a transferring

bank (whether alone or with any other person and whether as principal or agent and whether in writing or not), shall be construed and have effect on and from the appointed day as if any reference (however worded and whether express or implied) to such account between a transferring bank 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 continuing account between Dao Heng Bank and such customer:

Provided that nothing in this Ordinance shall affect any right of Dao Heng Bank 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 a transferring bank, either alone or jointly with another person, shall apply and have effect, on and from the appointed day, as if given to or by Dao Heng Bank or, as the case may be, to or by Dao Heng Bank jointly with such other person.
- (e) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed

by, a transferring bank, or payable at any place of business of a transferring bank, whether so drawn, given, accepted or endorsed before, on or after the appointed day, shall 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 Dao Heng Bank, or were payable at the same place of business of Dao Heng Bank.

(f) The custody of any document or record, goods or other thing held by a transferring bank as bailee shall pass to Dao Heng Bank on the appointed day, and the rights and obligations of a transferring bank under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of Dao Heng Bank.

(g) (i) Any security interest held immediately before the appointed day by a transferring bank, or by a nominee or agent of or trustee for a transferring bank, as security for the payment or discharge of any liability shall, on and from the appointed day, be held by, or, as the case may require, by that nominee, agent or trustee for, Dao Heng Bank, and be available to Dao Heng Bank (whether

for its own benefit or, as the case may be, 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 Dao Heng Bank in accordance with the provisions of this Ordinance and any liability thereby secured, Dao Heng Bank shall be entitled to the rights and priorities and be subject to the obligations and incidents to which the transferring bank in question would have been entitled and subject if it had continued to hold the security interest.
- (iii) Without prejudice to the generality of subparagraph (ii), in any case where any existing liability subsists between a transferring bank and Dao Heng Bank or between 2 transferring banks, in respect of which a transferring bank or Dao Heng Bank, or a nominee or agent of or trustee for a transferring bank or Dao Heng Bank holds a security interest, that liability shall, for the purpose of enforcing or realizing that security interest, be

deemed to continue in effect

notwithstanding the vesting of the undertakings in Dao Heng Bank.

- (iv) Any security interest referred to in subparagraph (i), (ii) or (iii) and which extends to future advances or liabilities shall, on and from the appointed day, be available to Dao Heng Bank (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of future advances and liabilities to the same extent and in the same manner in all respects as future advances by, or liabilities to, a transferring bank or Dao Heng Bank were secured thereby immediately before that day.
- (v) Notwithstanding subparagraph (i), where immediately before the appointed day any security interest would not be available to Dao Heng Bank as security for the payment or discharge of any liability owing to it, or to any transferring bank as security for the payment or discharge of any liability owing to it, such security interest shall not become

available to Dao Heng Bank as security for such liability on and from the appointed day by virtue of this Ordinance, unless -

- (A) the terms of such security interest expressly provide otherwise;
- (B) Dao Heng Bank obtains the written consent of the person or persons who granted such security interest; or
- (C) such security interest arises at general law.

(vi) Notwithstanding subparagraph (ii), where immediately before the appointed day, Dao Heng Bank 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 any transferring bank 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, Dao Heng Bank shall not, in respect of such liability, be entitled to such rights and priorities on and from the appointed day by virtue of this Ordinance, unless -

---



- (A) the terms of such security interest expressly provide otherwise;
- (B) Dao Heng Bank obtains the written consent of the person or persons who granted such security interest; or
- (C) such security interest arises at general law.

- (h) (i) Where by virtue of this Ordinance any right or liability of a transferring bank becomes or is deemed to become a right or liability of Dao Heng Bank, Dao Heng Bank and all other persons shall, on and from the appointed day, 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 Dao Heng Bank; and any legal proceedings or application to any authority existing or pending immediately before the appointed day by or against a transferring bank may be continued by or against Dao Heng Bank.

(ii) Where any right or liability of a transferring bank was before the appointed day the subject of arbitral proceedings to which the transferring bank was a party, Dao Heng Bank shall on and from the appointed day automatically be substituted for such transferring bank as a party to those proceedings, without the need for consent from any other party or from the arbitrator.

(i) Any judgment or award obtained by or against a transferring bank and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against such transferring bank, become enforceable by or against Dao Heng Bank.

(j) Any court order which applies to a transferring bank shall on and from the appointed day apply to Dao Heng Bank instead of to such transferring bank.

(k) Nothing in this Ordinance shall terminate or prejudicially affect the appointment, authority, rights or powers of any receiver or of any receiver and manager appointed by a transferring bank, whether alone or with others, before the appointed day.

(l) The Privacy Commissioner may, on and from the appointed day, exercise in respect of Dao Heng Bank

any power under the Personal Data (Privacy) Ordinance (Cap. 486) which he could have immediately before the appointed day exercised in respect of a transferring bank in respect of a breach or alleged breach by a transferring bank of that Ordinance or the data protection principles; but the transfer to, and vesting in, Dao Heng Bank by this Ordinance of the undertakings of the transferring banks and any disclosure to Dao Heng Bank of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which a transferring bank is subject immediately before the appointed day or to a contravention by Dao Heng Bank or a transferring bank of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

**8. Accounting treatment of Dao Heng Bank and the transferring banks**

(1) On and from the appointed day, by virtue of this Ordinance and notwithstanding the provisions of any other Ordinance -

- (a) the balance sheets and profit and loss accounts of the transferring banks and Dao Heng Bank for the accounting period of each of the transferring banks and Dao Heng Bank in which the appointed day falls shall be prepared in all respects as if the

undertakings had vested or deemed to have vested in Dao Heng Bank pursuant to section 5 on the first day of such accounting period of Dao Heng Bank;

- (b) all property and liabilities of DBS Kwong On Bank (other than excluded property) shall be transferred to Dao Heng Bank at their carrying value in the accounts of DBS Kwong On Bank on the first day of such accounting period of Dao Heng Bank;
  - (c) all property and liabilities of Overseas Trust Bank (other than excluded property) shall be transferred to Dao Heng Bank at their carrying value in the consolidated accounts of Dao Heng Bank on the first day of such accounting period of Dao Heng Bank;
  - (d) every existing reserve of DBS Kwong On Bank relating to the property and liabilities vested in Dao Heng Bank by virtue of this Ordinance as stated in the accounts of DBS Kwong On Bank on the first day of such accounting period of Dao Heng Bank shall be transferred to and for all purposes be and become a reserve of Dao Heng Bank;
  - (e) every existing reserve of Overseas Trust Bank relating to the property and liabilities vested in Dao Heng Bank by virtue of this Ordinance as consolidated in the group accounts of Dao Heng Bank (including Overseas Trust Bank and Dao Heng Bank) on the first day of such accounting period of Dao
-

Heng Bank shall be transferred to and for all purposes be and become a reserve of Dao Heng Bank; and

- (f) the amount, description and character of every reserve of Dao Heng Bank which shall come into being pursuant to paragraphs (d) and (e) shall be the same in all respects as those of the corresponding existing reserve of the transferring banks immediately before the first day of such accounting period of Dao Heng Bank, and all enactments and rules of law shall apply to or in respect of every such reserve of Dao Heng Bank in the same manner in all respects as they applied to or in respect of the corresponding existing reserve of the transferring banks immediately before the first day of such accounting period of Dao Heng Bank.

(2) Every reference in subsection (1) to an existing reserve shall include a reference to any reserve or similar provision, irrespective of its name or designation (and whether the amount thereof be positive or negative in nature) and, without prejudice to the generality of the foregoing, every such reference shall include a reference to any sums standing to the credit (or debit) of any profit and loss account.

(3) Without prejudice to the generality of subsection (1), any profits or losses of the transferring banks earned or incurred

after the beginning of the financial year of the transferring banks in which the appointed day shall occur, shall, on and from the appointed day, and by virtue of this Ordinance, be treated for all purposes as profits or, as the case may be, losses, of Dao Heng Bank.

**9. Taxation and revenue matters**

(1) For the purposes of the Inland Revenue Ordinance (Cap. 112), on and from the appointed day Dao Heng Bank shall be treated as if it were the continuation of and the same person in law with regard to the undertakings as the transferring banks.

(2) Accordingly (and without affecting the generality of subsection (1)) -

- (a) a vesting or deemed vesting in Dao Heng Bank of any property or liabilities by virtue of this Ordinance does not constitute a sale or other disposal of or a change in the nature of that property or the liability for any purpose under the Inland Revenue Ordinance (Cap. 112);
- (b) the aggregate amount of any losses sustained by the transferring banks which are capable of but have not been carried forward and set off against assessable profits of the transferring banks for the purposes of section 19C of the Inland Revenue Ordinance (Cap. 112) as at the end of the last complete financial year of the transferring banks

are deemed to be losses of Dao Heng Bank and, accordingly, available for set off against the assessable profits of Dao Heng Bank for the purposes of that Ordinance.

(3) The profits or losses of the transferring banks treated as profits or losses of Dao Heng Bank in accordance with section 8(3) -

- (a) shall not be taken into account for the purpose of computing the profits and losses of the transferring banks which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for any year of assessment; and
- (b) shall be taken into account for the purpose of computing the profits and losses of Dao Heng Bank which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for the year of assessment the basis period for which includes the appointed day.

**10. Contracts of employment**

(1) Section 7(a) shall apply to a contract for the employment of any person by a transferring bank and employment with a transferring bank and Dao Heng Bank under any such contract shall be deemed for all purposes to be a single continuing employment.

(2) No director, secretary or auditor of a transferring bank

shall by virtue only of this Ordinance become a director, secretary or auditor, as the case may be, of Dao Heng Bank.

**11. Pensions, provident funds and gratuity benefits**

(1) The deeds and rules constituting or relating to the pension fund schemes, the provident fund schemes established for the benefit of employees of the transferring banks and the gratuity benefits payable by the transferring banks shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to the transferring banks there were substituted a reference to Dao Heng Bank.

(2) No officer or employee of a transferring bank who becomes an officer or employee of Dao Heng Bank by virtue of this Ordinance shall, by virtue only of this Ordinance, be entitled to participate in any pension fund, provident fund or gratuity payments payable by Dao Heng Bank, and no existing officer or employee of Dao Heng Bank shall, by virtue only of this Ordinance, be entitled to participate in any pension fund, provident fund scheme of or gratuity benefits payable by a transferring bank.

**12. Waiver of prohibition of merger**

(1) Any provision contained in any contract or other document to which a transferring bank or Dao Heng Bank or any of their respective subsidiaries is a party which prohibits or has the effect of prohibiting the transfer and vesting or deemed



transfer and vesting of the undertakings of the transferring banks in Dao Heng Bank shall be deemed by this Ordinance to have been waived.

(2) Any provision contained in any contract or other document to the effect that a breach of contract or a default shall occur or be deemed to occur as a result of the transfer and vesting or deemed transfer and vesting of the undertakings of the transferring banks in Dao Heng Bank, and to which a transferring bank or Dao Heng Bank or any of their respective subsidiaries is a party, shall be deemed by this Ordinance to have been waived.

**13. 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 a transferring bank shall be admissible in evidence in respect of the same matter for or against Dao Heng Bank.

(2) In this section, "documents" (文件) has the same meaning as in section 46 of the Evidence Ordinance (Cap. 8).

**14. Part III of Evidence Ordinance (Cap. 8)**

(1) On and from the appointed day, Part III of the Evidence Ordinance (Cap. 8) shall apply to the banker's records of the transferring banks vested or deemed to be vested in Dao Heng Bank by virtue of this Ordinance, and to entries made in those records before the appointed day, as if such records were the records of Dao Heng Bank.

(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 Dao Heng Bank by virtue of this Ordinance shall be deemed to have been the ordinary banker's records of Dao Heng Bank at the time of the making of any entry therein which purports to have been made before the appointed day, and any such entry shall be 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 the transferring banks shall by virtue of this Ordinance be deemed to be documents previously in the custody or control of Dao Heng Bank.

(4) In this section, "banker's records" (銀行紀錄) shall be construed in accordance with section 2 of the Evidence Ordinance (Cap. 8).

#### **15. Evidence of vesting and transfer**

(1) The production of a Government Printer's copy of this Ordinance shall, for all purposes, be conclusive evidence of the vesting and transfer or deemed vesting and transfer of any property and liabilities of the transferring banks in Dao Heng Bank in accordance with the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1) -

- (a) a Government Printer's copy of this Ordinance, together with evidence of publication of notice of

the appointed day, shall, in relation to any registered securities transferred to, and vested or deemed to be vested in, Dao Heng Bank by virtue of this Ordinance, operate for all purposes as a duly executed instrument of transfer in respect of the transfer of such registered securities from the transferring banks to Dao Heng Bank;

- (b) any deed or other document made or executed on or after the appointed day, whereby Dao Heng Bank or a transferring bank, 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 a transferring bank immediately before the appointed day and forming part of the undertakings, whether alone or jointly with any other person, shall be sufficient evidence that the interest of the transferring banks in that property is vested or deemed to be vested in Dao Heng Bank under this Ordinance;
- (c) where there is any other transaction or purported transaction by Dao Heng Bank or a transferring bank on or after the appointed day in connection with, or in relation to, any property or liabilities which are property or liabilities of the

transferring banks immediately before that day and forming part of the undertakings, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that Dao Heng Bank 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;

- (d) a certificate given by or on behalf of Dao Heng Bank at any time that any property or liabilities specified in the certificate (which property or liabilities immediately before the appointed day are the property or liabilities of a transferring bank) are or, as the case may be, are not, deemed to be vested in Dao Heng Bank under this Ordinance, shall be conclusive evidence for all purposes of the fact so certified.

(3) Nothing in subsection (2) (c) or (d) shall affect the liability of Dao Heng Bank and the transferring banks to each other 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) In subsection (2) -

- (a) "convey" (轉易) includes mortgage, charge, lease, assent, vest by way of vesting declaration or

vesting instrument, disclaim, release or otherwise assure; and

- (b) "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 such a 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 not).

(5) Nothing in this section applies to any property falling within section 5(2).

#### 16. Interests in land

(1) The vesting or deemed vesting in Dao Heng Bank of an interest in land by virtue of this Ordinance shall not -

- (a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of section 53(4)(a) or (7)(a), 119E(2) or 119H(1)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7); or
- (b) 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); or
- (c) operate so as to merge any leasehold interest in

the reversion expectant on it; or

- (d) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest for the purposes of any provision contained in any instrument concerning or affecting that interest; or
- (e) operate as a breach of covenant or condition against alienation; or
- (f) give rise to any forfeiture, damages or other right of action; or
- (g) invalidate or discharge any contract or security interest; or
- (h) 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 registration of any interest in land in the name of a transferring bank (whether alone or with any other person) and all existing registration of any interest in land in the name of Dao Heng Bank (whether alone or with any other person), immediately before the appointed day shall be construed and have effect on and from the appointed day as if the name "[new name of Dao Heng Bank]" had been entered on the land register instead of the name of such transferring bank or Dao Heng Bank, as the case may be.

(3) To enable Dao Heng Bank to complete title, if thought fit, to any property transferred to it and vested or deemed to be vested in it by virtue of this Ordinance by notice of title, deed, instrument or otherwise, or to deduce title, this Ordinance shall be deemed to be, and may be used as an assignment, conveyance, transfer or, as the case may be, general disposition of such property in favour of Dao Heng Bank.

(4) Dao Heng Bank shall register or cause to be registered in the Land Registry a Government Printer's copy of this Ordinance against a property transferred to it and vested or deemed to be vested in it by virtue of this Ordinance in respect of the vesting of all the properties of the transferring banks transferred to and vested or deemed to be vested in Dao Heng Bank by virtue of this Ordinance.

(5) For the avoidance of doubt, nothing in this section shall exempt Dao Heng Bank and the transferring banks from the provisions of the Stamp Duty Ordinance (Cap. 117).

**17. Saving for enactments concerning  
banking institutions**

Nothing in this Ordinance shall exempt Dao Heng Bank or a transferring bank or any subsidiary of Dao Heng Bank or a transferring bank from the provisions of any enactment regulating the carrying on of the business of any of them.

**18. Saving for companies**

Nothing in this Ordinance shall prejudice the powers of Dao Heng Bank to alter its memorandum and 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 shall prejudice the powers of any member of the DBS Group 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.

**19. 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.

**Explanatory Memorandum**

The purpose of this Bill is to transfer the undertakings of DBS Kwong On Bank Limited and Overseas Trust Bank, Limited to Dao Heng Bank Limited. Dao Heng Bank Limited, DBS Kwong On Bank Limited and Overseas Trust Bank, Limited are banks licensed under the Banking Ordinance (Cap. 155) and are incorporated in Hong Kong.



2. The Bill provides for the vesting or deemed vesting of the undertakings of DBS Kwong On Bank Limited and Overseas Trust Bank, Limited in Dao Heng Bank Limited on the appointed day (clause 5), for the change of name of Dao Heng Bank Limited, DBS Kwong On Bank Limited and Overseas Trust Bank, Limited and revocation of the banking licence of DBS Kwong On Bank Limited and Overseas Trust Bank, Limited (clause 4) and contains a number of supplementary provisions relating, inter alia, to the effect of the vesting in relation to trusts and wills (clause 6), the accounting treatment of Dao Heng Bank Limited, DBS Kwong On Bank Limited and Overseas Trust Bank, Limited (clause 8), taxation matters (clause 9), the relationship with customers, borrowers, employees and other third parties (clauses 7, 10, 11 and 12), and evidence (clauses 13 to 15).

FRESHFIELDS BRUCKHAUS DERINGER  
Solicitors for  
Dao Heng Bank Limited  
DBS Kwong On Bank Limited  
Overseas Trust Bank, Limited

