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Information Note

Legislative Council Panel on Financial Affairs

Meeting on 16 December 2002

The Bank of East Asia, Limited (Merger of Subsidiaries) Bill

Introduction

1. This note seeks to inform Members regarding The Bank of East Asia, Limited (Merger of Subsidiaries) Bill and to solicit Members' views.

General

2. It is proposed that the Bill is introduced as a private Member's bill. The Bill is sponsored by The Hon. Mr. Ng Leung Sing. The Bill relates to merger of financial institutions and so the Administration will be requested to give its view as to whether the Bill relates to Government policies for the purpose of Article 74 of the Basic Law. If the Bill is related to Government policies, it will be necessary to obtain the consent of the Chief Executive for the introduction of the Bill into the Legislative Council.

Merger of Financial Institutions

3. The Bill provides for the merger of East Asia Credit Company Limited ("**EACredit**") and East Asia Finance Company, Limited ("**EAFinance**") with The Bank of East Asia, Limited ("**Bank of East Asia**"). Both EACredit and EAFinance are wholly owned subsidiaries of Bank of East Asia. The intention of the merger is to allow for the consolidation and better conduct of the businesses of EACredit, EAFinance and Bank of East Asia.

4. In a number of jurisdictions, such as the United States, Japan and Switzerland, financial institutions 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 mergers of financial institutions 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 entity which are governed by Hong Kong law. Given the large number of outstanding agreements between EACredit and/or EAFinance and their respective customers, it is not practical to transfer such assets and liabilities by way of novation and assignment to Bank of East Asia.

5. It is the Government's stated policy to support consolidation of the banking and financial 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 mergers of financial institutions where reasonable proposals are submitted for consolidation. This is, however, always subject to the overriding aim to promote the stability of the banking system and to provide an appropriate degree of protection to depositors in the merged institutions and to depositors generally.

6. As regards this particular case, the proposed merger will help promote stability of the banking sector.

The Bill

7. The purpose of the Bill is to transfer the entire undertakings of EACredit and EAFinance to Bank of East Asia. EACredit, EAFinance and Bank of East Asia are all incorporated in Hong Kong and are authorised institutions under the Banking Ordinance: EACredit is registered as a deposit-taking company, EAFinance holds a restricted banking licence and Bank of East Asia holds a banking licence. At the merger, the registration of EACredit as a deposit-taking company and the restricted banking licence of EAFinance will be revoked.

8. The Bill provides for the vesting of the entire undertakings of EACredit and EAFinance in Bank of East Asia on the appointed day. The key provisions of the Bill are summarised in the following paragraphs.

9. **Clause 3** provides that the board of directors of Bank of East Asia may determine an appointed day upon which the merger will take effect and that such appointed day must be notified jointly by EACredit, EAFinance and Bank of East Asia in the Gazette.

10. **Clause 4** provides that, on the appointed day, the name of EACredit be changed to "BEAC Limited" and the name of EAFinance be changed to "BEAF Limited", and their respective authorised and issued share capital be reduced. Clause 4 also provides that the registration of EACredit as a deposit-taking company and the restricted banking licence of EAFinance shall be revoked on a day to be appointed by the Monetary Authority and notified in the Gazette.

11. **Clause 5** is the main transfer and vesting provision in the Bill. It provides that the undertakings of EACredit and EAFinance shall transfer to and vest in Bank of East Asia as if Bank of East Asia were the same person in law as EACredit or EAFinance, as the case may be, upon the appointed day.

12. **Clause 6** deals with property which, before the merger, is held by either EACredit or EAFinance in a capacity as a trustee. It provides that in such case, the relevant document should be read as if references to EACredit or EAFinance were references to Bank of East Asia.

13. **Clause 7(a) to (k)** provides that all contracts and agreements entered into by, made with, given to or by or addressed to EACredit or EAFinance shall, after the merger takes effect, be construed as if Bank of East Asia had been the original party instead of EACredit or EAFinance, as the case may be, and, accordingly, all references to EACredit or EAFinance must be construed as if they were to Bank of East Asia. **Clause 7(a) to (k)** also provides for accounts, negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgements to be transferred to Bank of East Asia upon the appointed day. **Clauses 7(g)(v) and (vi)** are provisions which seek to reflect previous concerns in respect of other bank mergers (raised by the Hon. Mr Albert Ho Chun-yan) regarding the possible increase of security or charges over customers' assets as a result of the merger. These provisions seek to ensure that Bank of

East Asia's existing charges and security interests will not be expanded over assets previously held by EACredit or EAFinance of a common EACredit / EAFinance / Bank of East Asia customer.

14. **Clause 7(l)** deals with data privacy issues under the Personal Data (Privacy) Ordinance. It provides that the Privacy Commissioner may exercise in respect of Bank of East Asia any power which he may, before the merger, have exercised in respect of EACredit or EAFinance. It also provides that the transfer of personal data from EACredit and EAFinance to Bank of East Asia under the Bill shall not result in a breach of any duty of confidentiality or a contravention of the Personal Data (Privacy) Ordinance.

15. **Clause 8** provides for the accounting treatment of Bank of East Asia, EACredit and EAFinance following the transfer of the undertakings of EACredit and EAFinance to Bank of East Asia. It provides that the balance sheets and profit and loss accounts of EACredit, EAFinance and Bank of East Asia 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 Bank of East Asia on the first day of such accounting period of Bank of East Asia.

16. **Clause 9** provides that no director, secretary or auditor of EACredit or EAFinance shall, by virtue of the Bill only, automatically become a director, secretary or auditor, as the case may be, of Bank of East Asia.

17. **Clause 10** prevents the merger of EACredit and EAFinance with Bank of East Asia constituting an event of default or a termination event in a contract or agreement to which any of Bank of East Asia or its subsidiaries or EACredit or EAFinance is a party.

18. **Clauses 11 to 13** set out provisions dealing with evidence and the admissibility of evidence in respect of any matter for or against EACredit or EAFinance which, transferred by the Bill, becomes admissible in evidence after the merger in respect of the same matter for or against Bank of East Asia,

including for the purposes of the vesting, custody and control of banker's records under the Evidence Ordinance.

19. **Clause 14** deals with the effect of the merger on interests in land in Hong Kong held by EACredit or EAFinance and provides that the vesting of EACredit's or EAFinance's interests in land in Bank of East Asia pursuant to the merger does not constitute an acquisition, assignment, transfer or parting with possession under the Landlord and Tenant (Consolidation) Ordinance. **Clause 14** also provides that the vesting in Bank of East Asia of EACredit's or EAFinance's 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 states that nothing in **Clause 14** exempts EACredit, EAFinance or Bank of East Asia from the provisions of the Stamp Duty Ordinance.

20. **Clause 15** states that nothing in the Bill shall exempt EACredit, EAFinance or Bank of East Asia or any subsidiary of the Bank of East Asia from any of the provisions of the Banking Ordinance and other ordinances regulating the carrying on of their businesses.

21. **Clause 16** provides that the Bill does not prevent Bank of East Asia from amending its memorandum and articles of association or dealing with its property or business generally. **Clause 16** also provides that nothing in the Bill prevents EACredit or EAFinance from altering its memorandum and articles of association or dealing with its property generally before the appointed day.

22. **Clause 17** 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.

The Hon. Mr. Ng Leung Sing

16 December 2002

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THE BANK OF EAST ASIA, LIMITED (MERGER OF SUBSIDIARIES) BILL

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A BILL

To

Provide for the vesting in The Bank of East Asia, Limited of the undertakings of East Asia Credit Company Limited and East Asia Finance Company, Limited and for other related purposes.

Preamble

WHEREAS -

- (a) The Bank of East Asia, Limited 東亞銀行有限公司 (hereinafter called "Bank of East Asia") 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;
- (b) East Asia Credit Company Limited (東亞授信有限公司) (hereinafter called "EACredit") is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a deposit-taking company registered under the Banking Ordinance (Cap. 155) carrying on the business of taking deposits as a deposit-taking company in Hong Kong;
- (c) East Asia Finance Company, Limited (東亞財務有限公司) (hereinafter called "EAFinance") is a company incorporated under the laws of Hong Kong having its registered office in Hong Kong and is a restricted

licence bank licensed under the Banking Ordinance (Cap. 155) carrying on the business of taking deposits as a restricted licence bank in Hong Kong;

- (d) EACredit and EAFinance are wholly owned subsidiaries of Bank of East Asia;
- (e) for the better conduct of the business of Bank of East Asia, EACredit and EAFinance, it is expedient that their respective undertakings be merged and that such merger should occur by means of a transfer of the undertakings of EACredit and EAFinance to Bank of East Asia; and
- (f) in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of EACredit and EAFinance, it is expedient that the said undertakings be transferred to Bank of East Asia by this Ordinance without interference with the conduct and continuity of the respective businesses of EACredit, EAFinance and Bank of East Asia.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as The Bank of East Asia, Limited (Merger of Subsidiaries) 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;

"Bank of East Asia" (東亞銀行) means The Bank of East Asia, Limited 東亞銀行有限公司;

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

"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);

"EACredit" (東亞授信) means East Asia Credit Company Limited (東亞授信有限公司) which name will be changed to "BEAC Limited" on the appointed day;

"EAFinance" (東亞財務) means East Asia Finance Company, Limited (東亞財務有限公司) which name will be changed to "BEAF Limited" on the appointed day;

"excluded property" (除外財產) means -

- (a) the common seal of each of the merging entities;
- (b) documents (other than accounting records) required to be kept by the merging entities pursuant to the Companies Ordinance (Cap. 32); and

(c) the issued share capital of the merging entities represented by the paid-up shares beneficially owned by Bank of East Asia;

"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);

"merging entity" (合併實體) means EACredit or EAFinance, and

"merging entities" means EACredit and EAFinance;

"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);

"undertaking" (業務) means the business and all existing property, reserves and liabilities of a merging entity of whatsoever nature other than the excluded property, and "undertakings" means the undertakings of EACredit and EAFinance;

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

(2) Any reference in this Ordinance to property or liabilities of a merging entity is a reference to property or liabilities to which that merging entity 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 that merging entity, and whether that merging entity 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 Bank of East Asia may appoint a day for the purposes of this Ordinance.

(2) EACredit, EAFinance and Bank of East Asia 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, EACredit, EAFinance and Bank of East Asia 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 deposit-taking company registration and restricted banking licence

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

- (a) (i) the name of EACredit shall, in accordance with this section, be changed to "BEAC Limited";
- (ii) the name of EAFinance shall, in accordance with this section, be changed to "BEAF Limited";
- (b) (i) the authorized and issued share capital of EACredit shall be reduced to \$10 comprising 10 ordinary shares of \$1 each

and 74 999 990 ordinary shares of \$1 each shall be cancelled;

(ii) the authorized and issued share capital of EAFinance shall be reduced to \$1,000 comprising 10 ordinary shares of \$100 each and 999 990 ordinary shares of \$100 each shall be cancelled; and

(c) the registration of EACredit as a deposit-taking company and the restricted banking licence of EAFinance 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, each of the merging entities shall deliver to the Registrar of Companies a copy of this Ordinance together with a minute, signed by a director or the secretary of the relevant merging entity confirming the reduction of share capital and cancellation of shares referred to in subsection (1).

(3) The Registrar of Companies shall, pursuant to this Ordinance, register the copy of the Ordinance and the minute delivered to him pursuant to subsection (2) and on the appointed day -

(a) shall enter the new names of EACredit and EAFinance in the register in place of their respective former

names and issue to each merging entity a certificate of incorporation on change of name stating their respective new names; and

(b) shall certify under his hand the registration of the Ordinance and the minute which certificate shall be conclusive evidence of the reduction of the authorized and issued share capital of the relevant merging entity.

**5. Vesting of the undertakings
in Bank of East Asia**

(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, Bank of East Asia to the intent that Bank of East Asia shall succeed to the whole undertakings as if in all respects Bank of East Asia were the same person in law as the relevant merging entity.

(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 undertaking is governed otherwise than by the laws of Hong Kong, the merging entity in question shall, if Bank of East Asia so requires, as soon as is practicable after the appointed day, take all necessary steps for securing the effective transfer and vesting thereof in Bank of East Asia and, pending such transfer and vesting, the merging entity in question shall hold any such property in trust absolutely for Bank of East Asia.

6. Trust property and wills

(1) Any property which immediately before the appointed day was held by a merging entity, 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 Bank of East Asia 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 became vested in a merging entity, 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 merging entity 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 merging entity not being a reference (however worded and whether express or implied) to terms

and conditions of, or to a scale of fees of, the merging entity, there were substituted a reference to Bank of East Asia provided always that this subsection shall not prevent Bank of East Asia 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 which appoints a merging entity 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 the merging entity 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, the merging entity, there were substituted a reference to Bank of East Asia.

(4) No testamentary gift shall be adeemed 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 -

- (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 merging entity (whether alone or with any other person and whether as principal or agent and whether in writing or not), other than those entered into by, made with, given to or by or addressed to such merging entity in relation to the excluded property, shall be construed and have effect on and from the appointed day as if -

- (i) Bank of East Asia had been a party thereto instead of such merging entity;
- (ii) for any reference (however worded and whether express or implied) to such merging entity there were substituted, as respects anything falling to be done on or after the appointed day, a reference to Bank of East Asia; and
- (iii) any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of such merging entity were, as respects anything falling to be done on or after

the appointed day, a reference to the directors of Bank of East Asia or, as the case may require, to such director, officer or employee of Bank of East Asia as Bank of East Asia may appoint for that purpose or, in default of appointment, to the director, officer or employee of Bank of East Asia 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 15, apply to any statutory provision, to any provision of any existing contract to which a merging entity 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 merging entity and a customer shall, on the appointed day, be transferred to Bank of East Asia and become an account between Bank of East Asia and such customer subject to the same conditions and incidents as theretofore; and 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 merging entity (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 such merging entity 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 Bank of East Asia and such customer:

Provided that nothing in this Ordinance shall affect any right of Bank of East Asia 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 merging entity, either alone or jointly with

another person, shall apply and have effect, on and from the appointed day, as if given to or by Bank of East Asia or, as the case may be, to or by Bank of East Asia 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 merging entity, or payable at any place of business of a merging entity, 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 Bank of East Asia, or were payable at the same place of business of Bank of East Asia.
- (f) The custody of any document or record, goods or other thing held by a merging entity as bailee shall pass to Bank of East Asia on the appointed day, and the rights and obligations of the merging entity under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of Bank of East Asia.
- (g) (i) Any security interest held immediately before the appointed day by a merging entity, or by a nominee or agent of or trustee for a merging entity, 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, Bank of East Asia, and be available to Bank of East Asia (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 Bank of East Asia in accordance with the provisions of this Ordinance and any liability thereby secured, Bank of East Asia shall be entitled to the rights and priorities and be subject to the obligations and incidents to which the merging entity 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 merging entity and Bank of East Asia or between the merging entities, in respect

of which a merging entity or Bank of East Asia, or a nominee or agent of or trustee for a merging entity or Bank of East Asia 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 Bank of East Asia.

(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 Bank of East Asia (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 merging entity or, as the case may be, Bank of East Asia 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 Bank of East Asia as security for the payment or discharge of any liability owing to it, or to any merging entity as security for the payment or discharge of any liability owing to it, such security interest shall not become available to Bank of East Asia 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) Bank of East Asia 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, Bank of East Asia 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 merging entity 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 East Asia 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) Bank of East Asia 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 merging entity becomes or is deemed to become a right or liability of Bank of East Asia, Bank of East Asia 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 Bank of East Asia; and any legal proceedings or application to any authority existing or pending immediately before the appointed day by or against a merging entity may be continued by or against Bank of East Asia.

- (ii) Where any right or liability of a merging entity was before the appointed day the subject of arbitral proceedings to which the relevant merging entity was a party, Bank of East Asia shall on and from the appointed day automatically be substituted for such merging entity 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 merging entity and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against such merging entity, become enforceable by or against Bank of East Asia.

- (j) Any court order which applies to a merging entity shall on and from the appointed day apply to Bank of East Asia instead of to such merging entity.
- (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 merging entity, whether alone or with others, before the appointed day.
- (l) The Privacy Commissioner may, on and from the appointed day, exercise in respect of Bank of East Asia any power under the Personal Data (Privacy) Ordinance (Cap. 486) which he could have immediately before the appointed day exercised in respect of a merging entity in respect of a breach or alleged breach by the merging entity of that Ordinance or the data protection principles; but the transfer to, and vesting in, Bank of East Asia by this Ordinance of the undertakings and any disclosure to Bank of East Asia of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which a merging entity is subject immediately before the appointed day or to a contravention by Bank of East Asia or a merging entity of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

8. Accounting treatment of Bank of East Asia and the merging entities

(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 merging entities and Bank of East Asia 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 Bank of East Asia pursuant to section 5 on the first day of such accounting period of Bank of East Asia;
- (b) all property and liabilities of the merging entities shall be transferred to Bank of East Asia at their carrying value in the consolidated accounts of the group including the merging entities and Bank of East Asia on the first day of such accounting period of Bank of East Asia;
- (c) each existing reserve of the merging entities as reflected in the consolidated accounts of the group including the merging entities and Bank of East Asia on the first day of such accounting period of Bank of East Asia shall be transferred to and for all purposes be and become a reserve of Bank of East Asia; and
- (d) the amount, description and character of every reserve of Bank of East Asia which shall come into

being pursuant to paragraph (c) shall be the same in all respects as those of the corresponding existing reserve of the merging entities immediately before the first day of such accounting period of Bank of East Asia, and all enactments and rules of law shall apply to or in respect of every such reserve of Bank of East Asia in the same manner in all respects as they applied to or in respect of the corresponding existing reserve of the merging entities immediately before the first day of such accounting period of Bank of East Asia.

(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 a merging entity earned or incurred after the beginning of the accounting period of such merging entity 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 Bank of East Asia.

9. Officers of the merging entities

No director, secretary or auditor of a merging entity shall by virtue only of this Ordinance become a director, secretary or auditor, as the case may be, of Bank of East Asia.

10. Waiver of prohibition of merger

(1) Any provision contained in any contract or other document to which Bank of East Asia or any of its subsidiaries or a merging entity is a party which prohibits or has the effect of prohibiting the transfer and vesting or deemed transfer and vesting of the undertaking in Bank of East Asia 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 default shall occur or be deemed to occur as a result of the transfer and vesting or deemed transfer and vesting of the undertaking in Bank of East Asia, and to which Bank of East Asia or any of its subsidiaries or a merging entity is a party, shall be deemed by this Ordinance to have been waived.

11. 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 merging entity shall be admissible in evidence in respect of the same matter for or against Bank of East Asia.

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

12. 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 merging entities deemed to be vested in Bank of East Asia by virtue of this Ordinance, and to entries made in those records before the appointed day, as if such records were the records of Bank of East Asia.

(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 East Asia by virtue of this Ordinance shall be deemed to have been the ordinary banker's records of Bank of East Asia 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 merging entities shall by virtue of this Ordinance be deemed to be documents previously in the custody or control of Bank of East Asia.

(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).

13. 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 a merging entity in Bank of East Asia 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 in, Bank of East Asia 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 relevant merging entity to Bank of East Asia;
- (b) any deed or other document made or executed on or after the appointed day, whereby Bank of East Asia or a merging entity, 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 merging entity immediately before the appointed day and forming part of the undertaking, whether alone or jointly with any other person,

shall be sufficient evidence that the interest of the relevant merging entity in that property has been vested in Bank of East Asia under this Ordinance;

- (c) where there is any other transaction or purported transaction by Bank of East Asia or a merging entity on or after the appointed day in connection with, or in relation to, any property or liabilities which are property or liabilities of a merging entity immediately before that day and forming part of the undertaking, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that Bank of East Asia has full power and authority for that transaction as if the property or liabilities were vested in it under this Ordinance;
- (d) a certificate given by or on behalf of Bank of East Asia 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 merging entity) are or, as the case may be, are not, deemed to be vested in Bank of East Asia under this Ordinance, shall be conclusive evidence for all purposes of the fact so certified.

(3) Nothing in subsection (2)(c) and (d) shall affect the liability of the merging entities and Bank of East Asia 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).

14. Interests in land

(1) The vesting and deemed vesting in Bank of East Asia of an interest in land by virtue of this Ordinance shall not -

(a) constitute an acquisition, 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 EACredit or EAFinance (whether alone or with any other

person) shall be construed and have effect on and from the appointed day as if Bank of East Asia had been entered on the land register instead of EACredit or EAFinance (as the case may be).

(3) To enable Bank of East Asia 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 Bank of East Asia.

(4) Bank of East Asia 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 from EACredit in respect of the vesting of all the properties of EACredit transferred to and vested or deemed to be vested in Bank of East Asia by virtue of this Ordinance.

(5) Bank of East Asia 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 from EAFinance in respect of the vesting of all the properties of EAFinance transferred to and vested or deemed to be vested in Bank of East Asia by virtue of this Ordinance.

(6) For the avoidance of doubt, nothing in this section shall exempt EACredit, EAFinance or Bank of East Asia from the provisions of the Stamp Duty Ordinance (Cap. 117).

15. Saving for enactments concerning banking institutions

Nothing in this Ordinance shall exempt EACredit, EAFinance or Bank of East Asia or any subsidiary of Bank of East Asia from the provisions of any enactment regulating the carrying on of the business of any of them.

16. Saving for companies

Nothing in this Ordinance shall prejudice the powers of Bank of East Asia 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 EACredit or EAFinance to alter their respective memorandum and articles of association or to dispose of, or deal with, their respective property, security interests or liabilities before the appointed day.

17. 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 respective undertakings of East Asia Credit Company Limited, which is a deposit-taking company registered under the Banking Ordinance (Cap. 155) and is incorporated in Hong Kong and East Asia Finance Company, Limited, which is a restricted licence bank licensed under the Banking Ordinance (Cap. 155) and is incorporated in Hong Kong, to The Bank of East Asia, Limited, which is a bank licensed under the Banking Ordinance (Cap. 155) and is incorporated in Hong Kong.

2. The Bill provides for the vesting or deemed vesting of the respective undertakings of East Asia Credit Company Limited and East Asia Finance Company, Limited in The Bank of East Asia, Limited on the appointed day (clause 5), for the change of name, reduction of capital, and revocation of the deposit-taking company registration of East Asia Credit Company Limited and the restricted banking licence of East Asia Finance Company, 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 East Asia Credit Company Limited, East Asia Finance Company, Limited and The Bank of East Asia, Limited (clause 8), the relationship with

customers, borrowers, officers and other third parties (clauses 7, 9 and 10), and evidence (clauses 11 to 13).

CLIFFORD CHANCE
Solicitors for
The Bank of East Asia, Limited
East Asia Credit Company Limited
East Asia Finance Company, Limited