

**INFORMATION NOTE**

**LEGISLATIVE COUNCIL PANEL ON FINANCIAL AFFAIRS  
MEETING ON 1 MARCH 2004  
WING HANG BANK LIMITED (MERGER) BILL**

**Introduction**

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

**Merger of Wing Hang Bank Limited and Chekiang First Bank, Limited**

3. The Bill provides for the merger of Wing Hang Bank Limited (*Wing Hang*) with Chekiang First Bank, Limited (*CFB*) (the *Merger*). The intention of the Merger is to allow Wing Hang and CFB to consolidate their banking businesses to increase efficiency through economies of scale. Following Wing Hang's acquisition of all of the outstanding shares of CFB, effective 30 September 2003, CFB and its subsidiaries are now members of the Wing Hang Group.

**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 to effect an ordinance transferring all property and liabilities of the merging bank which are governed by Hong Kong law. Given the large number of outstanding agreements between CFB and its customers, it is not practical to transfer such assets and liabilities by way of novation and assignment to Wing Hang.

**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 CFB to Wing Hang. Wing Hang and CFB are both authorised institutions regulated by the Hong Kong Monetary Authority (*HKMA*) and are incorporated in Hong Kong. In conjunction with the Merger pursuant to the Bill, CFB will seek the revocation of its banking licence issued by the HKMA pursuant to the Banking Ordinance. CFB is not listed on The Stock Exchange of Hong Kong Limited.

7. The Bill provides for the transfer and vesting of the undertakings of CFB to and in Wing Hang on the appointed day. Except for certain excluded property, all of the business of CFB on the appointed day will form part of the undertakings transferred to and vested in Wing Hang 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 Wing Hang or CFB to exclude any property or liabilities from the undertakings to be transferred and vested.

8. The key provisions of the proposed Bill will be similar to those of other bank merger bills that have been enacted in Hong Kong and are summarised in the following paragraphs.

- (a) **Clause 3** provides that the board of directors of Wing Hang may determine an appointed day upon which the Merger will take effect and that such appointed day must be notified by both Wing Hang and CFB in the Gazette.
- (b) **Clause 4** provides that CFB's name will be changed to "[Chekiang First, Limited]"<sup>1</sup> on the appointed day. In addition, CFB's authorized and issued share capital will be reduced on the appointed day, and its banking licence will 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 CFB (not including the "excluded property") shall transfer to and vest in Wing Hang as if Wing Hang were the same person in law as CFB upon the appointed day.
- (d) **Clause 6** deals with property which, before the Merger, is held by CFB in a capacity as a trustee. It provides that in such case, the relevant document should be read as if references to CFB were references to Wing Hang.
- (e) **Clauses 7(a) to (k)** provide that all contracts and agreements made with, given to or by or addressed to CFB (other than excluded property) shall, after the Merger takes effect, be construed as if Wing Hang had been the original party instead of CFB and, accordingly, all references to CFB must be construed as if they were to Wing Hang. **Clauses 7(a) to (k)** also provide for accounts,

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<sup>1</sup> The new name of CFB to be confirmed by Wing Hang.

negotiable instruments, powers of attorney, security, court orders, arbitration awards and judgements to be transferred to Wing Hang 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 Wing Hang's existing charges and security interests will not be expanded over assets previously held by CFB of a common customer of Wing Hang and CFB.

- (f) **Clause 7(1)** provides that the transfer of personal data from CFB to Wing Hang 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 Wing Hang any power which he could, before the Merger, have exercised in respect of CFB.
- (g) **Clause 8** provides for the accounting treatment of Wing Hang following the Merger. It provides that the balance sheets and profit and loss accounts of CFB and Wing Hang 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 Wing Hang on the first day of such accounting period of Wing Hang.
- (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 Wing Hang in respect of the profits and losses of CFB and Wing Hang in respect of the year of assessment 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 of CFB's contracts of employment with those employees who are transferred by the Bill to Wing Hang 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 CFB shall, by virtue of the Merger only, automatically become a director, secretary or auditor of Wing Hang.
- (j) **Clause 11** ensures that CFB's employees who are members of CFB's pension fund schemes shall continue to be members of these schemes after the transfer of CFB's undertakings to Wing Hang. It also ensures that former employees of CFB and existing employees of Wing Hang 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 constituting an event of default or a termination event in a contract or agreement to which CFB or Wing Hang 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 CFB which, transferred by the Bill, becomes admissible in evidence after the Merger in respect of the same matter for or against Wing Hang, 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 CFB and provides that the vesting of CFB's interests in land in Wing Hang 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 Wing Hang of CFB'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 stipulates that nothing in **Clause 16** exempts either Wing Hang or CFB from the provisions of the Stamp Duty Ordinance.
- (n) **Clause 17** states that nothing in the Bill shall exempt either CFB or Wing Hang 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 Wing Hang 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 CFB 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 Wing Hang and CFB as one and the same as CFB in law; and allowing any profits and losses of CFB to be treated as the profits and losses of Wing Hang from the appointed day under the Bill.

10. In previously enacted merger bills, the Government has allowed the merged entity, for tax assessment purposes, to carry forward any losses accumulated by any of the merging entities. As CFB does not have any accumulated losses for tax assessment purposes, the Bill should not result in any loss of Government's revenue.

## **Employee Retention**

11. The Merger itself will not result in any material level of employee redundancies. As a result of an ongoing harmonisation and integration process which commenced following the acquisition of CFB by Wing Hang on 30 September 2003, there has been significant rationalisation and realignment of the physical and human resources of the Wing Hang Group (including CFB and its

subsidiaries), and there is therefore no need for significant retrenchment to take place at the time of Merger.

12. Employment matters following the Merger will follow a “business as usual” model and staffing requirements will be kept under ongoing business review, with decisions to be made as appropriate to the circumstances.

13. As at 15 February 2004, there was a total of 2,234 staff employed by the Wing Hang Group (with 1,326 employed by Wing Hang and 624 by CFB).

### **Public Consultation**

14. The Administration is in support of the Bill. The HKMA, 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 their comments, if any, have been accommodated.

### **Legislative Timetable**

15. 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 and introduce it into the Legislative Council in March/April 2004.

### **Enquiries**

16. 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**

**1 March 2004**

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**WING HANG BANK,  
LIMITED (MERGER) BILL**

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# WING HANG BANK, LIMITED (MERGER) BILL

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A BILL

TO

Provide for the vesting in Wing Hang Bank, Limited of the undertakings of Chekiang First Bank, Limited and for other related purposes.

**Preamble**

Whereas-

- (a) Wing Hang Bank, Limited (永亨銀行有限公司) (hereinafter called “*Wing Hang 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) Chekiang First Bank, Limited (浙江第一銀行有限公司) (hereinafter called “*Chekiang First 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) Chekiang First Bank is a wholly-owned subsidiary of Wing Hang Bank and a member of the Wing Hang Group;
- (d) for the better conduct of the businesses of Wing Hang Bank, Chekiang First Bank and the Wing Hang Group, it is expedient that the respective undertakings of Wing Hang Bank and Chekiang First Bank be merged and that such merger should occur by means of a transfer of the undertakings of Chekiang First Bank to Wing Hang Bank; and
- (e) in view of the extent of the contractual and other legal relationships affecting the conduct of the undertakings of Chekiang First Bank, it is expedient that the said undertakings be transferred to Wing Hang Bank by this Ordinance without interference with the conduct and continuity of the respective businesses of Wing Hang Bank and Chekiang First Bank.

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Wing Hang 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;

“*Chekiang First Bank*” (浙江第一銀行) means Chekiang First Bank, Limited (浙江第一銀行有限公司);

“*customer*” (客戶) means any person having a banking account or other dealing, transaction or arrangement with Chekiang First Bank;

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

“*excluded property*” (除外財產) means -

- (a) the common seal of Chekiang First Bank;
- (b) documents required to be kept by Chekiang First Bank pursuant to the Companies Ordinance (Cap. 32);
- (c) the issued share capital of Chekiang First Bank represented by the paid-up shares beneficially owned by Wing Hang 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);

“*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);

“*undertakings*” (業務) means the businesses and all existing property, reserves and liabilities of Chekiang First Bank of whatsoever nature, other than the excluded property;

“*will*” (遺囑) includes a codicil and any other testamentary writing;

“*Wing Hang Bank*” (永亨銀行) means Wing Hang Bank, Limited (永亨銀行有限公司);

“*Wing Hang Group*” (永亨集團) means Wing Hang Bank and its subsidiaries.

(2) Any reference in this Ordinance to property or liabilities of Chekiang First Bank is a reference to property or liabilities to which Chekiang First 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 Chekiang First Bank, and whether Chekiang First 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 Wing Hang Bank may appoint a day for the purposes of this Ordinance.

(2) Wing Hang Bank and Chekiang First Bank 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, Wing Hang Bank and Chekiang First Bank 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 Chekiang First Bank shall, in accordance with this section, be changed to [Chekiang First, Limited];
  - (b) the authorized and issued share capital of Chekiang First Bank shall be reduced to \$500 comprising 5 ordinary shares of \$100 each and 24999995 ordinary shares of \$100 each shall be cancelled; and

- (c) the banking licence of Chekiang First Bank 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, Chekiang First 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 Chekiang First Bank 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 shall -

- (a) enter the new name of Chekiang First Bank in the register in place of its former name and issue to Chekiang First Bank a certificate of change of name stating Chekiang First Bank's new name; and
- (b) 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 Chekiang First Bank.

## **5. Vesting of the undertakings in Wing Hang 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, Wing Hang Bank to the intent that Wing Hang Bank shall succeed to the whole undertakings as if in all respects Wing Hang Bank were the same person in law as Chekiang First 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, Chekiang First Bank shall, if Wing Hang 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 Wing Hang Bank and, pending such transfer and vesting, Chekiang First Bank shall hold any such property and liabilities in trust absolutely for Wing Hang Bank.

## **6. Trust property and wills**

(1) Any property vested or deemed to be vested in Wing Hang Bank by virtue of this Ordinance which immediately before the appointed day was held by Chekiang First 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 Wing Hang 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 Chekiang First 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, Chekiang First 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 Chekiang First Bank not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, Chekiang First Bank, there were substituted a reference to Wing Hang Bank provided always that this subsection shall not prevent Wing Hang 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 Chekiang First 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 Chekiang First 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, Chekiang First Bank, there were substituted a reference to Wing Hang 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 Chekiang First 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) Wing Hang Bank had been a party thereto instead of Chekiang First Bank;

- (ii) for any reference (however worded and whether express or implied) to Chekiang First Bank there were substituted, as respects anything falling to be done on or after the appointed day, a reference to Wing Hang Bank; and
  - (iii) any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of Chekiang First Bank were, as respects anything falling to be done on or after the appointed day, a reference to the directors of Wing Hang Bank or, as the case may require, to such director, officer or employee of Wing Hang Bank as Wing Hang Bank may appoint for that purpose or, in default of appointment, to the director, officer or employee of Wing Hang 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 Chekiang First 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 Chekiang First Bank and a customer shall, on the appointed day, be transferred to Wing Hang Bank and become an account between Wing Hang 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 Chekiang First 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 Chekiang First 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 Wing Hang Bank and such customer:

Provided that nothing in this Ordinance shall affect any right of Wing Hang 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 Chekiang First 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 Wing Hang Bank or, as the case may be, to or by Wing Hang 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, Chekiang First Bank, or payable at any place of business of Chekiang First 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 Wing Hang Bank, or were payable at the same place of business of Wing Hang Bank.
- (f) The custody of any document or record, goods or other thing held by Chekiang First Bank as bailee shall pass to Wing Hang Bank on the appointed day, and the rights and obligations of Chekiang First 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 Wing Hang Bank.
- (g)
  - (i) Any security interest held immediately before the appointed day by Chekiang First Bank, or by a nominee or agent of or trustee for Chekiang First 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, Wing Hang Bank, and be available to Wing Hang 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 Wing Hang Bank in accordance with the provisions of this Ordinance and any liability thereby secured, Wing Hang Bank shall be entitled to the rights and priorities and be subject to the obligations and incidents to which Chekiang First Bank 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 Chekiang First Bank and Wing Hang Bank, in respect of which Chekiang First Bank or Wing Hang Bank, or a nominee or agent of or trustee for Chekiang First Bank or Wing Hang 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 Wing Hang 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 Wing Hang 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, Chekiang First Bank or Wing Hang 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 Wing Hang Bank as security for the payment or discharge of any liability owing to it, or to Chekiang First Bank as security for the payment or discharge of any liability owing to it, such security interest shall not become available to Wing Hang 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) Wing Hang 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, Wing Hang 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 Chekiang First 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, Wing Hang 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) Wing Hang 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 Chekiang First Bank becomes or is deemed to become a right or liability of Wing Hang Bank, Wing Hang 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 Wing Hang Bank; and any legal proceedings or application to any authority existing or pending immediately before the appointed day by or against Chekiang First Bank may be continued by or against Wing Hang Bank.

- (ii) Where any right or liability of Chekiang First Bank was before the appointed day the subject of arbitral proceedings to which Chekiang First Bank was a party, Wing Hang Bank shall on and from the appointed day automatically be substituted for Chekiang First 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 Chekiang First Bank and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against Chekiang First Bank, become enforceable by or against Wing Hang Bank.
- (j) Any court order which applies to Chekiang First Bank shall on and from the appointed day apply to Wing Hang Bank instead of to Chekiang First 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 Chekiang First Bank, whether alone or with others, before the appointed day.
- (1) The Privacy Commissioner may, on and from the appointed day, exercise in respect of Wing Hang Bank any power under the Personal Data (Privacy) Ordinance (Cap. 486) which he could have immediately before the appointed day exercised in respect of Chekiang First Bank in respect of a breach or alleged breach by Chekiang First Bank of that Ordinance or the data protection principles; but the transfer to, and vesting in, Wing Hang Bank by this Ordinance of the undertakings of Chekiang First Bank and any disclosure to Wing Hang Bank of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which Chekiang First Bank is subject immediately before the appointed day or to a contravention by Wing Hang Bank or Chekiang First Bank of the Personal Data (Privacy) Ordinance (Cap. 486) or the data protection principles.

## **8. Accounting treatment of Wing Hang Bank and Chekiang First Bank**

- (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 Chekiang First Bank and Wing Hang Bank for the accounting period of each of



Chekiang First Bank and Wing Hang 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 Wing Hang Bank pursuant to section 5 on the first day of such accounting period of Wing Hang Bank;

- (b) all property and liabilities of Chekiang First Bank (other than excluded property) shall be transferred to Wing Hang Bank at their carrying value in the consolidated accounts of Wing Hang Group (including Chekiang First Bank and Wing Hang Bank) on the first day of such accounting period of Wing Hang Bank;
- (c) every existing reserve of Chekiang First Bank relating to the property and liabilities vested in Wing Hang Bank by virtue of this Ordinance as consolidated in the group accounts of Wing Hang Group (including Chekiang First Bank and Wing Hang Bank) on the first day of such accounting period of Wing Hang Bank shall be transferred to and for all purposes be and become a reserve of Wing Hang Bank; and
- (d) the amount, description and character of every reserve of Wing Hang Bank which shall come into being pursuant to paragraph (c) shall be the same in all respects as those of the corresponding existing reserve of Chekiang First Bank immediately before the first day of such accounting period of Wing Hang Bank, and all enactments and rules of law shall apply to or in respect of every such reserve of Wing Hang Bank in the same manner in all respects as they applied to or in respect of the corresponding existing reserve of Chekiang First Bank immediately before the first day of such accounting period of Wing Hang 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 Chekiang First Bank earned or incurred after the beginning of the financial year of Chekiang First Bank 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 Wing Hang Bank.

## **9. Taxation and revenue matters**

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

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

- (a) a vesting or deemed vesting in Wing Hang 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 Chekiang First Bank which are capable of but have not been carried forward and set off against assessable profits of Chekiang First Bank for the purposes of section 19C of the Inland Revenue Ordinance (Cap. 112) as at the end of the last complete financial year of Chekiang First Bank are deemed to be losses of Wing Hang Bank and, accordingly, available for set off against the assessable profits of Wing Hang Bank for the purposes of that Ordinance.
- (3) The profits or losses of Chekiang First Bank treated as profits or losses of Wing Hang Bank in accordance with section 8(3)-
- (a) shall not be taken into account for the purpose of computing the profits and losses of Chekiang First Bank 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 Wing Hang 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 Chekiang First Bank and employment with Chekiang First Bank and Wing Hang Bank under any such contract shall be deemed for all purposes to be a single continuing employment.

(2) No director, secretary or auditor of Chekiang First Bank shall by virtue only of this Ordinance become a director, secretary or auditor, as the case may be, of Wing Hang Bank.

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

(1) The deeds and rules constituting or relating to the pension fund schemes and the provident fund schemes established for the benefit of employees of Chekiang First Bank and the gratuity benefits payable by Chekiang First Bank 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 Chekiang First Bank there were substituted a reference to Wing Hang Bank.

(2) No officer or employee of Chekiang First Bank who becomes an officer or employee of Wing Hang Bank by virtue of this Ordinance shall, by virtue only of this Ordinance, be entitled to participate in any pension fund scheme of, provident fund scheme of or gratuity benefits payable by Wing Hang Bank, and no existing officer or employee of Wing Hang Bank shall, by virtue only of this Ordinance, be entitled to participate in any pension fund scheme of, provident fund scheme of or gratuity benefits payable by Chekiang First Bank.

## **12. Waiver of prohibition of merger**

(1) Any provision contained in any contract or other document to which Chekiang First Bank or Wing Hang 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 Chekiang First Bank in Wing Hang 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 Chekiang First Bank in Wing Hang Bank, and to which Chekiang First Bank or Wing Hang 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 Chekiang First Bank shall be admissible in evidence in respect of the same matter for or against Wing Hang 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 Chekiang First Bank vested or deemed to be vested in Wing Hang 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 Wing Hang 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 Wing Hang Bank by virtue of this Ordinance shall be deemed to have been the ordinary banker’s records of Wing Hang 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 Chekiang First Bank shall by

virtue of this Ordinance be deemed to be documents previously in the custody or control of Wing Hang 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 Chekiang First Bank in Wing Hang 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, Wing Hang 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 Chekiang First Bank to Wing Hang Bank;
- (b) any deed or other document made or executed on or after the appointed day, whereby Wing Hang Bank or Chekiang First 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 Chekiang First 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 Chekiang First Bank in that property is vested or deemed to be vested in Wing Hang Bank under this Ordinance;
- (c) where there is any other transaction or purported transaction by Wing Hang Bank or Chekiang First Bank on or after the appointed day in connection with, or in relation to, any property or liabilities which are property or liabilities of Chekiang First Bank 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 Wing Hang 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 Wing Hang 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 Chekiang First Bank) are or,

as the case may be, are not, deemed to be vested in Wing Hang 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 Wing Hang Bank and Chekiang First Bank 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 Wing Hang 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 registrations of any instruments relating to land or interests in land in the name of Chekiang First 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 “Wing Hang Bank, Limited (永亨銀行有限公司)” had been entered on the land register instead of the name of Chekiang First Bank.

(3) To enable Wing Hang 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 an assignment, conveyance, transfer or, as the case may be, general disposition of such property in favour of Wing Hang Bank and the production of a Government Printer’s copy of this Ordinance shall be conclusive evidence of this Ordinance for the purpose of proving or deducing title in favour of Wing Hang Bank.

(4) For the purpose of enabling the public to be informed of this Ordinance through the public records at the Land Registry in relation to the properties or interests in land affected by this Ordinance, Wing Hang 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 Chekiang First Bank transferred to and vested or deemed to be vested in Wing Hang Bank by virtue of this Ordinance.

(5) For the avoidance of doubt, nothing in this section shall exempt Wing Hang Bank and Chekiang First Bank from the provisions of the Stamp Duty Ordinance (Cap. 117).

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

Nothing in this Ordinance shall exempt Wing Hang Bank or Chekiang First Bank or any subsidiary of Wing Hang Bank or Chekiang First 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 Wing Hang 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 Chekiang First Bank 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 Chekiang First Bank, Limited to Wing Hang Bank, Limited. Wing Hang Bank, Limited and Chekiang First 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 Chekiang First Bank, Limited in Wing Hang Bank, Limited on the appointed day (clause 5), for the change of name, reduction of capital and revocation of the banking licence of Chekiang First 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 Wing Hang Bank, Limited and Chekiang First 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  
Wing Hang Bank, Limited  
Chekiang First Bank, Limited