



BANK MERGER (NATIONAL/BNZ) ACT 1997

No. 40 of 1997

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A.D. 1997

No. 40 of 1997

An Act to provide for the transfer to National Australia Bank Limited of certain assets and liabilities of Bank of New Zealand and for related purposes.

[Assented to 17 July 1997]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Bank Merger (National/BNZ) Act 1997*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act—

"**appointed day**" means a day fixed by proclamation as the appointed day for the purposes of this Act;

"**asset**" includes—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property;
- (b) a present, contingent or future right, power or privilege or immunity (including a present or future cause of action in favour of BNZ);
- (c) an asset (as defined above) held in a fiduciary capacity;

"**BNZ**" means Bank of New Zealand (ARBN 000 000 288);

"**BNZ employee**" means a person employed by BNZ in South Australia;

"cause of action" includes a right to bring, defend or participate in legal proceedings;

"CEO" of National means the chief executive officer of National or a delegate of the chief executive officer;

"document" includes a disc, tape or other medium in which information is stored;

"excluded asset" means—

- (a) all rights in relation to BNZ's employees;
- (b) an asset declared by the CEO of National to be an excluded asset in a certificate signed by the CEO and received by the Treasurer before the appointed day;
- (c) an asset related to an excluded liability;

"excluded liability" means—

- (a) all liabilities in relation to BNZ's employees;
- (b) a liability declared by the CEO of National to be an excluded liability in a certificate signed by the CEO and received by the Treasurer before the appointed day;
- (c) a liability related to an excluded asset;

"instrument" includes—

- (a) a legislative instrument;
- (b) a judgment, order or process of a court;
- (c) any other document;

"legal proceedings" includes an arbitration or an administrative proceeding;

"land" includes an estate or interest in land, or an interest in respect of land;

"liability" includes—

- (a) a present, future or contingent liability (arising at law or in equity);
- (b) a duty or non-pecuniary obligation;
- (c) in relation to BNZ—a present or future cause of action against BNZ;

"National" means National Australia Bank Limited (ACN 004 044 937);

"security" means—

- (a) a mortgage or charge; or
- (b) a guarantee; or

- (c) another instrument acknowledging, evidencing, recording, imposing or securing a liability for the payment of money or the discharge of a liability;

"transferred asset" means an asset transferred to National under this Act;

"transferred liability" means a liability transferred to National under this Act;

"Treasurer" means the Treasurer of South Australia;

"undertaking" of BNZ means—

- (a) all assets of BNZ except excluded assets; and
- (b) all liabilities of BNZ except excluded liabilities.

Act binds the Crown

4. This Act binds the Crown not only in right of the State but (so far as the State's legislative power extends) in all its other capacities.

Extra-territorial application

5. (1) This Act applies both within and outside the State.

(2) This Act applies outside the State to the full extent of the extra-territorial legislative power of the State, but not so as to affect the operations of BNZ in a jurisdiction in which it remains a separate entity.

PART 2
VESTING OF BNZ'S UNDERTAKING IN NATIONAL

Vesting of undertaking

6. (1) On the appointed day, BNZ's undertaking is transferred to, and vested in, National.

(2) The transfer of assets and liabilities under this section has effect despite the provisions of any other law or instrument.

(3) The transfer of a liability under this section discharges BNZ from the liability.

Transitional provisions

7. The following transitional provisions apply:

- (a) for the purpose of construing an instrument or an oral agreement, understanding or undertaking so far as it applies to a transferred asset or liability—
- (i) a reference to BNZ is to be construed as a reference to National; and
 - (ii) a reference to a branch, or agency of BNZ is to be construed as a reference to the corresponding branch, office or agency of National or a branch, office or agency designated by the CEO of National as the corresponding branch, office or agency; and
 - (iii) a reference to an officer of BNZ is to be construed as a reference to the corresponding officer of National or an officer designated by the CEO of National as the corresponding officer; and
- (b) the relationship of banker and customer existing between BNZ and a customer in relation to a transferred asset or transferred liability immediately before the transfer took effect continues between National and the customer after the transfer takes effect and gives rise to the same rights (including rights of set-off) and the same liabilities as would have arisen if there had been no transfer; and
- (c) an instruction, order, mandate, authority or notice given to BNZ before the transfer took effect is, so far as it is referable to a transferred asset or transferred liability, taken to have been given to National; and
- (d) if a security held by BNZ is referable to a transferred asset or transferred liability, then, so far as it is referable to the transferred asset or transferred liability—
- (i) National becomes entitled or subject to rights, priorities and liabilities in relation to the security that BNZ would have had if there had been no transfer; and
 - (ii) the security is available to National as security for the discharge of transferred liabilities including, where the security extends to future liabilities, liabilities incurred after the transfer; and
- (e) National is entitled to possession of all documents to which BNZ was entitled immediately before the transfer took effect that are entirely referable to a transferred asset or transferred liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or transferred liability and another asset or liability that is not transferred; and

- (f) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by BNZ, is (if BNZ's liability under the instrument or order is a transferred liability) payable by National in the same way as if it had been drawn by or on, or accepted or endorsed by, National; and
- (g) a cheque drawn on an account transferred to National is, although expressed to be drawn on the account formerly at BNZ, taken to have been drawn on the account at National; and
- (h) if an account in respect of which a credit or debit card was issued by BNZ is transferred, the card is taken to have been issued by National and to be the property of National; and
- (i) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement, National may exercise those rights without exposing BNZ to liability for parting with possession of the property, or permitting the possession or use of the property by another person, contrary to the terms of the lease or agreement; and
- (j) National has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from BNZ as BNZ would have had if there had been no transfer; and
- (k) if, at the appointed day, legal proceedings had been commenced by or against BNZ or were continuing by or against BNZ because of a transfer of an interest to BNZ or BNZ's assumption of responsibility for conducting or defending the proceedings—
 - (i) the proceedings must (subject to discontinuance) be continued and completed by or against National; and
 - (ii) National will have the same rights and privileges as BNZ would have had if there had been no transfer; and
 - (iii) a document that could have been given in evidence by or against BNZ if there had been no transfer may be given in evidence by or against National; and
- (l) National may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability in its own name or in BNZ's name.

Direct payment orders to accounts

8. An instruction, order or mandate for payments to be made to an account at BNZ is, if the account at BNZ is transferred to National under this Act, taken to be an instruction, order or mandate for the payments to be made to the account at National.

Registration of title, etc

9. (1) The Registrar-General or other person required or authorised by law to register or record transactions affecting assets or liabilities—

- (a) may (without formal application) register or record in the appropriate manner the transfer of an asset or liability under this Act; and
- (b) must, on application by National, register or record in the appropriate manner the transfer of an asset or liability under this Act.

(2) A transaction related to a transferred asset or transferred liability entered into by National in BNZ's name or the name of a predecessor in title to BNZ, if effected by an instrument otherwise in registrable form, must be registered even though National has not been registered as proprietor of the asset.

Exclusion of obligation to inquire

10. (1) A person dealing with National is not obliged to inquire whether an asset to which the transaction relates is or is not a transferred asset.

(2) A person dealing with BNZ is not obliged to inquire whether an asset to which the transaction relates is or is not a transferred asset.

(3) If BNZ was entitled to an asset before the appointed day, and after that day, BNZ or National purports to deal with the asset as if entitled to it, the transaction is valid even though the body corporate purporting to deal with the asset is not entitled to do so because the asset is, or is not, a transferred asset.

(4) However, this section does not validate a transaction if the party dealing with BNZ has actual notice of the deficiency of title, or acts fraudulently.

**PART 3
GENERAL**

Taxes and duties

11. (1) No stamp duty, financial institutions duty or debits tax is payable under the law of the State in respect of—

- (a) the transfer of assets or liabilities under this Act; or
- (b) an application or entry made, receipt given, or anything else done for the purpose of acknowledging, evidencing, recording, registering, or giving effect to a transfer of assets or liabilities under this Act.

(2) No obligation arises under an Act for the assessment or imposition of stamp duty, financial institutions duty or debits tax—

- (a) to lodge a statement or return relating to a transfer of assets or liabilities under this Act; or
- (b) to include information about such a transfer in a statement or return.

(3) However, National must pay to the Treasurer an amount determined by the Treasurer on the basis of an estimate of the taxes and duties that would have been payable under the law of this State if BNZ's undertaking had been transferred to National without the assistance of this Act.

(4) The Treasurer must give National written notice of the determination.

(5) The amount must be paid as required by the Treasurer in the notice of determination.

Notice of assignment of charges under Corporations Law

12. (1) National must, within 6 months after the commencement of this section or such longer period as the Australian Securities Commission allows, lodge with the Australian Securities Commission a notice stating that it has become the holder of registrable charges on property of companies under this Act.

(2) On lodging of that notice, National will be taken, for the purposes of the *Corporations Law* and the *Corporations (Fees) Regulations*—

- (a) to have lodged a separate notice under section 268(1) of the *Corporations Law* in respect of each registrable charge on property of a company of which it has become holder under this Act; and
- (b) in each case to have given a copy of the notice to the company in accordance with that subsection.

Name in which National carries on business

13. (1) National may carry on business in the State under any of the following names:

- (a) its own name; or
- (b) Bank of New Zealand Australia; or
- (c) any other name registered under the *Business Names Act 1996*.

(2) BNZA and BNZ Australia must, on application by National, be registered as business names under the *Business Names Act 1996*.

Service of documents

14. (1) Service of a document on and after the appointed day—

- (a) on National will be taken to be service on BNZ in addition to service on National; and
- (b) on BNZ will be taken to be service on National in addition to service on BNZ.

(2) Subsection (1) ceases to apply on BNZ ceasing to be a related body corporate of National within the meaning of section 9 of the Corporations Law.

Evidence

15. (1) The CEO may issue a certificate certifying that specified assets or liabilities are, or are not, transferred assets or transferred liabilities.

(2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted in legal proceedings or by an administrative official as proof of the matter certified in the absence of proof to the contrary.

(3) The transfer of BNZ's undertaking to National does not affect the character that records made by BNZ or a bank from which BNZ acquired the records may have as banking records for the purposes of the law of evidence.

Act overrides other laws

16. This Act has effect despite the *Real Property Act 1886* or any other law.

Effect of things done or allowed under Act

17. Nothing done or allowed under this Act—

- (a) constitutes a breach or, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or any other obligee wholly or in part from an obligation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor