



Australia and New Zealand Banking Group Act 1996

1996 CHAPTER ii

PART III

TRANSFER OF BUSINESS TO ANZ

- 5 Schemes for transfer to ANZ of property, liabilities, trusteeships and other appointments in United Kingdom**
- (1) Within five years from the passing of this Act ANZ may jointly with a Transferor make a scheme or schemes for—
 - (a) the transfer to ANZ of any of the property and liabilities to which, immediately before the appointed day for any such scheme, a Transferor is entitled or subject;
 - (b) the substitution of ANZ for a Transferor or of a director, officer, representative or employee of ANZ for a director, officer, representative or employee of a Transferor, in any position held by it or by such person as a trustee; and
 - (c) the substitution of ANZ for a Transferor, or of a director, officer, representative or employee of ANZ for a director, officer, representative or employee of a Transferor, as the holder of any office or appointment other than of trustee.
 - (2) A transfer scheme under subsection (1) above shall take effect on such day as may be specified in the scheme as the appointed day for the scheme; and in each case before the earliest day specified as an appointed day for a scheme in relation to any Transferor under this Act, ANZ shall publish in the London Gazette, the Edinburgh Gazette and the Belfast Gazette a notice stating that it is the earliest day so specified for a transfer scheme under this Act in relation to that Transferor.
 - (3) Not less than seven days before the appointed day for a transfer scheme a Transferor shall give written notice to every person having a bank account which is to be transferred by or in consequence of the scheme (or, in the case of a joint account, the first-named account holder) that the account is to become an account with ANZ and of the appointed day for the scheme:

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Provided that a failure by the Transferor so to give such notice to any account holder shall not invalidate the scheme.

- (4) On the appointed day for a transfer scheme any property and liabilities transferred by the scheme shall, by virtue of this Act and without further assurance, be transferred to and vested in ANZ to the intent that ANZ shall succeed to such property and liabilities as if for all purposes ANZ were the same person in law as the Transferor.
- (5) Where the transfer of any property or liability to which a transfer scheme relates is governed by the law of any country or territory outside the United Kingdom, the Transferor shall, if ANZ so requires, take all necessary steps to secure that the transfer of the property or liability to ANZ is fully effective under the law of that country or territory and pending such transfer any such property shall be held by the Transferor in trust for ANZ and ANZ shall be liable to the Transferor for any such liability.

6 Provisions as to trust and other property and liabilities in United Kingdom

- (1) Where a transfer scheme transfers to ANZ property or a liability to which immediately before the appointed day for the scheme a Transferor was then entitled or subject as a trustee or as the holder of any other office or appointment, whether alone or jointly with another person, it shall be held by ANZ, or ANZ shall be subject to it, on and from the appointed day, alone or, as the case may be, jointly with that other person, in that capacity upon the same trusts or terms and with and subject to the same powers and provisions as were applicable to the Transferor immediately before the appointed day.
- (2) Where ANZ is substituted for a Transferor as a trustee or as the holder of any other office or appointment under paragraph (b) or (c) of section 5 (1) above—
 - (a) any property to which the Transferor was then in that capacity entitled, whether alone or jointly with another person, shall, by virtue of this Act and without further assurance, be transferred to and held by ANZ alone or, as the case may be, jointly with that other person, upon the same trusts or terms and with and subject to the same powers, provisions and liabilities as were applicable to the Transferor immediately before the appointed day; and
 - (b) ANZ shall, by virtue of this Act and without further assurance, in the same capacity and upon the same terms, become subject to any liability to which the Transferor was then in that capacity subject, whether alone or jointly with another person.
- (3) Where a director, officer, representative or employee of ANZ is substituted for a director, officer, representative or employee of a Transferor as a trustee or as the holder of any other office or appointment under paragraph (b) or (c) of section 5 (1) above—
 - (a) any property to which that director, officer, representative or employee of the Transferor was then, as trustee or as the holder of that office or appointment, entitled, whether alone or jointly with another person, shall, by virtue of this Act and without further assurance, be transferred to and held by that director, officer, representative or employee of ANZ alone or, as the case may be, jointly with that other person upon the same trusts or terms and with and subject to the same powers, provisions and liabilities as were applicable to the director, officer, representative or employee of the Transferor immediately before the appointed day; and
 - (b) that director, officer, representative or employee of ANZ shall, by virtue of this Act and without further assurance, as trustee or as the holder of the office or appointment aforesaid, and upon the same terms, become subject to

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any liability to which the director, officer, representative or employee of the Transferor whom he is replacing was then, as trustee or as the holder of that office or appointment, subject, whether alone or jointly with another person.

- (4) Any instrument or order of any court under or by virtue of which any property has been or is to become vested in a Transferor as a trustee or as the holder of any other office or appointment, and any provision therein, or any agreement or arrangement for the payment to, or retention by, a Transferor of remuneration for its services as a trustee or as the holder of any other office or appointment, shall, if that property is transferred by or in consequence of a transfer scheme, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to a Transferor, other than a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, the Transferor, there were substituted a reference to ANZ.

7 Supplementary provisions as to schemes and transfers in United Kingdom

- (1) Without prejudice to the generality of the foregoing provisions of this Act but subject to any provision of this Act to the contrary effect, the following provisions shall have effect in relation to a transfer scheme and any property or liability transferred by or in consequence of a transfer scheme.
- (2) A transfer scheme may—
- (a) contain supplementary and incidental provisions for the purpose of giving full effect to the transfer by or in consequence of the scheme of property and liabilities and to the substitution of ANZ for a Transferor under paragraph (b) or (c) of section 5 (1) above; and
 - (b) revoke or vary any provision of an earlier transfer scheme before the appointed day for that scheme.
- (3) An agreement, transaction, or other thing (not contained in an enactment and not being a will) which has been made, effected or done by, to or in relation to, or with reference to, a Transferor and which—
- (a) immediately before the appointed day for a transfer scheme is in force or effective; and
 - (b) relates to any property or liability to be transferred to ANZ by or in consequence of the scheme or to any position in respect of which ANZ is substituted for the Transferor under paragraph (b) or (c) of section 5 (1) above,
- shall on and after that day have effect as if made, effected or done by, to or in relation to, or with reference to, ANZ.
- (4) Where any agreement, transaction or other thing has effect in accordance with subsection (3) above—
- (a) any reference to the Transferor in any document incorporating or otherwise connected with the agreement, transaction or other thing shall on and after the appointed day for the transfer scheme be construed as a reference to ANZ; and
 - (b) any reference (however worded and whether express or implied) in the agreement, transaction or other thing to the directors, officers, representatives or employees (or to any director, officer, representative or employee) of the Transferor shall on and after the appointed day for the transfer scheme be construed as a reference to the directors, officers, representatives or employees of ANZ or, as the case may require, to such director, officer, representative or employee of ANZ, as ANZ may nominate for that purpose or, in default

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of nomination, to the director, officer, representative or employee of ANZ who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee.

- (5) Any agreement or transaction which relates to property or liabilities which are only partly transferred to ANZ by or in consequence of a transfer scheme shall be construed as if the agreement or transaction, to the extent to which it is enforceable by and against the Transferor, constituted two separate agreements or transactions, one of which is enforceable by and against ANZ as regards the part of the property or, as the case may be, liabilities so transferred to it and not as regards the other part, and the other of which is enforceable by and against the Transferor as regards the part of the property or, as the case may be, liabilities not so transferred to ANZ and not as regards the other part.
- (6) Any account between a Transferor and a customer which is transferred by or in consequence of a transfer scheme shall be deemed for all purposes to be a single continuing account and, subject to the provisions of subsections (3) and (4) above and subsections (7) and (8) below, shall be subject to the same terms and conditions as those which applied before the transfer.
- (7) Nothing in subsection (6) above shall preclude the exercise of any right of ANZ (in place of the Transferor) or of a customer to vary the terms and conditions subject to which the account of the customer is kept.
- (8) Without prejudice to the generality of the foregoing, where by virtue of a transfer scheme and the operation of this Act ANZ becomes a party to an agreement, transaction or other thing in place of a Transferor, any reference in that agreement, transaction or other thing to a rate of interest prescribed by the Transferor shall be construed on and from the appointed day for the scheme as a reference to the equivalent rate of interest prescribed by ANZ.
- (9) Any negotiable instrument, letter of credit or order for payment of money which is transferred by a transfer scheme and has been drawn on, or given to, or accepted or endorsed by a Transferor, or is payable at a place of business of a Transferor, shall have the same effect as if it had been drawn on, or given to, or accepted or endorsed by, ANZ or were payable at a place of business of ANZ.
- (10) The custody of any document or record, goods or other thing held by a Transferor as bailee in connection with any property or liabilities to be transferred by a transfer scheme shall pass to ANZ on the appointed day for the scheme, and the rights and obligations of a Transferor under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of ANZ.
- (11)
 - (a) Any security held immediately before the appointed day for a transfer scheme by a Transferor in connection with any property or liabilities to be transferred by or in consequence of the scheme, or by a nominee or agent of or trustee for a Transferor, shall, on and from that day, be held by, or as the case may require, by that nominee, agent or trustee for, ANZ and be available to ANZ (whether for its own benefit or, as the case may be, for the benefit of any other person);
 - (b) In relation to any security transferred to ANZ by or in consequence of a transfer scheme and to any liabilities thereby secured, ANZ shall be entitled to the same rights and priorities and be subject to the same obligations as those to which the Transferor would have been entitled or subject if it had continued to hold the security;

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- (c) Without prejudice to the generality of paragraph (b) above, in any case where any existing liability subsists between a Transferor and ANZ in respect of which the Transferor or ANZ, or a nominee or agent of or trustee for the Transferor or ANZ, holds security, that liability shall, for the purpose of enforcing or realising that security, be deemed to continue in effect notwithstanding a transfer to ANZ of the liability or the benefit of the liability by or in consequence of a transfer scheme;
 - (d) Any security referred to in the foregoing provisions of this subsection which extends to future advances, liabilities or indebtedness shall, on and from the appointed day for the transfer scheme, be available to ANZ (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, liabilities and indebtedness to the same extent and in the same manner in all respects as it extends to future advances, liabilities or indebtedness immediately before that day.
- (12) On and from the appointed day for a transfer scheme, ANZ and all other persons shall 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 the property or liability transferred by or in consequence of the scheme as if it had been property or a liability of ANZ for the period before the appointed day for the scheme during which it had been the property or a liability of the Transferor; and any legal proceedings or applications to any authority pending immediately before the appointed day for the scheme by or against the Transferor may be continued by or against ANZ.
- (13) Any judgment, order or award obtained by or against a Transferor relating to property or a liability transferred by or in consequence of a transfer scheme or to any position in respect of which ANZ is substituted for the Transferor under paragraph (b) or (c) of section 5 (1) above and not fully satisfied before the appointed day for the scheme shall on and from that day, to the extent to which it was enforceable by or against the Transferor immediately before that day, be enforceable by or against ANZ and no longer by or against the Transferor.
- (14) In respect of—
- (a) any data transferred to ANZ by a transfer scheme, or
 - (b) any data relating to any property or a liability transferred to ANZ by or in consequence of a transfer scheme,
- the Data Protection Registrar may, on and from the appointed day for that transfer scheme, serve on ANZ any notice under section 10 of the Data Protection Act 1984 which he could have served on a Transferor in respect of a breach of the data protection principles by the Transferor before that appointed day; but the transfer of property or liabilities to ANZ by or in consequence of a transfer scheme and any disclosure to ANZ of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which the Transferor is or was subject immediately before the appointed day for the scheme or to a contravention by ANZ or the Transferor of the data protection principles.

8 Evidence: books and documents

All books and other documents which would, before the appointed day for a transfer scheme, have been evidence for or against the Transferor in respect of any matter to

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which the scheme relates shall be admissible in evidence in respect of the same matter for or against ANZ.

9 Application of Bankers' Books Evidence Act 1879

- (1) In this section “books” shall be construed in accordance with section 9 (2) of the Bankers' Books Evidence Act 1879.
- (2) On and from the appointed day for a transfer scheme the said Act of 1879 shall apply to those books of the Transferor which are transferred to ANZ by the scheme, and to entries made in those books before that day, as if such books were the books of ANZ.
- (3) For the purposes of section 4 of the said Act of 1879, books so transferred to ANZ shall be deemed to have been the ordinary books of ANZ at the time of the making of any entry therein which purports to have been made before the appointed day for the scheme, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

10 Evidence of transfer and vesting

- (1) In this section “convey” has the same meaning as in the Law of Property Act 1925.
- (2) A certificate issued jointly by or on behalf of ANZ and a Transferor that by or in consequence of a transfer scheme any property or liabilities specified in the certificate have been transferred to ANZ shall be conclusive evidence for all purposes of that fact.
- (3) A certificate issued under subsection (2) above, shall, in relation to any registered securities within the meaning of the Stock Transfer Act 1963 transferred to ANZ by or in consequence of a transfer scheme, operate for all the purposes of the said Act of 1963 as a duly executed stock transfer in respect of the transfer of such securities from the Transferor to ANZ.
- (4) Without prejudice to subsection (2) above (but subject to that subsection)—
 - (a) any document made or executed on or after the relevant first appointed day whereby ANZ, 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 Transferor immediately before that day, whether alone or jointly with any other person, shall be sufficient evidence that the interest of the Transferor in that property has been transferred to ANZ by or in consequence of a transfer scheme; and
 - (b) where there is any other transaction by ANZ on or after the relevant first appointed day in connection with, or in relation to, any property or liability which immediately before that day is property or a liability of a Transferor, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that ANZ has full power and authority for that transaction.
- (5) Without prejudice to subsection (2) above (but subject to that subsection)—
 - (a) any document made or executed on or after the first appointed day whereby a Transferor, 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 it immediately before that day, whether alone or jointly

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with any other person, shall be sufficient evidence that its interest in that property has not been transferred to ANZ by or in consequence of a transfer scheme; and

- (b) where there is any other transaction by a Transferor on or after the first appointed day in connection with, or in relation to, any property or liability which immediately before that day is property or a liability of the Transferor, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that the Transferor has full power and authority for that transaction.
- (6) No person may rely upon the provisions of subsection (4) or (5) above if he has knowledge to the contrary and nothing in this section affects the liability of ANZ, or of a Transferor, to the other of them in respect of anything done, or purported to have been done, by one of them in connection with, or in relation to, any property or liabilities transferred by or in consequence of a transfer scheme.

11 Savings in respect of transfers of property

The transfer of any property or of a liability by or in consequence of a transfer scheme or the substitution of ANZ for a Transferor under paragraph (b) or (c) of section 5 (1) above shall not—

- (1) constitute a purchase or creation of an interest in land for the purposes of section 30 (2) of the Landlord and Tenant Act 1954 or constitute a relevant disposal within the meaning of section 4 of the Landlord and Tenant Act 1987 for the purposes of that Act; or
- (2) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of property or of an interest in property for the purposes of any provision in any instrument, contract (whether in writing or not) or order of any court concerning that property or that interest; or
- (3) give rise to any forfeiture; or
- (4) invalidate or discharge any agreement, transaction, security or other thing; or
- (5) require further registration in respect of any security transferred by or in consequence of the scheme; or
- (6) cause the benefit of any agreement, licence or privilege enjoyed by a Transferor to be lost or surrendered or otherwise affected, or require the disposal by a Transferor of any interest, otherwise than as provided for in this Act; or
- (7) relieve any person under an obligation to a Transferor of a corresponding obligation to ANZ; or
- (8) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any agreement or arrangement to which ANZ or a Transferor is a party; or
- (9) operate so as to merge any leasehold interest in the reversion expectant on it.