

ELIZABETH II



1982 CHAPTER xvii

An Act to provide for the transfer to The National Bank of Australasia Limited of the undertaking of The Commercial Banking Company of Sydney Limited and for the transfer to National Nominees Limited of the property held by Commercial Nominees Pty. Limited as trustee; and for other purposes. [30th July 1982]

WHEREAS The National Bank of Australasia Limited (hereinafter called "the continuing bank") is a company incorporated under the Companies Act 1961 of the State of Victoria as a company limited by shares; and The Commercial Banking Company of Sydney Limited (hereinafter called "C.B.C.") is a company incorporated under the Companies Act 1961 of the State of New South Wales as a company also limited by shares:

And whereas National Nominees Limited is a company incorporated under the Companies Act 1961 of the State of Victoria as a company limited by shares and is a wholly-owned subsidiary of the continuing bank; and Commercial Nominees Pty. Limited is a company incorporated under the Companies Act 1961 of the

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State of New South Wales as a company limited by shares and is a wholly-owned subsidiary of C.B.C.:

And whereas C.B.C. became a wholly-owned subsidiary of the continuing bank in pursuance of schemes of arrangement under the provisions of the Companies Act 1961 of the State of New South Wales having effect from 1st October 1981:

And whereas the continuing bank and C.B.C. carry on banking business not only in the Commonwealth of Australia but also in the United Kingdom and elsewhere:

And whereas it is expedient in the interests of efficiency in banking that the banking business conducted by C.B.C. should be transferred to the continuing bank to the intent that such business shall cease to be conducted by C.B.C. and that the transfer be effected without interference with the conduct and continuity of that business:

And whereas it is expedient that contemporaneously with that transfer all property held by Commercial Nominees Pty. Limited as trustee should be vested in National Nominees Limited:

And whereas it is expedient that the other provisions in this Act should be enacted:

And whereas the objects of this Act cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Commercial Banking Company of Sydney Limited (Merger) Act 1982.

Interpretation.

2. In this Act, unless the contrary intention appears—

“the appointed day” means such day as may be appointed under section 3 of this Act;

“C.B.C.” means The Commercial Banking Company of Sydney Limited;

“the continuing bank” means The National Bank of Australasia Limited;

“excluded assets” means—

(a) documents required to be kept by C.B.C. pursuant to the provisions of the Companies Acts 1948 to 1981;

(b) debentures, stocks, shares, bonds or notes, or any right or option in respect of any such debentures, stocks, shares, bonds or notes, in each case held immediately before the appointed day by or on behalf of C.B.C. otherwise than by way of security;

(c) land held, immediately before the appointed day, by or on behalf of C.B.C. otherwise than by way of security;

and "excluded asset" shall be construed accordingly;

"instrument" means an instrument (other than this Act) which creates, evidences, modifies or extinguishes rights or liabilities or would do so if it or a copy thereof were lodged, filed, registered or recorded under any Act or other law and includes any judgment, order, award and process of a court;

"land" includes any estate or interest in land, and any interest in respect of land;

"legal proceedings" includes an arbitration;

"liabilities" means all liabilities, duties and obligations, whether actual, contingent or prospective;

"property" means property of every kind whether tangible or intangible, real or personal, heritable or movable, corporeal or incorporeal, and without limiting the generality of the foregoing includes choses in action, goodwill, rights, interests and claims of every kind in or to property whether arising from, accruing under, created or evidenced by or the subject of an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

"rights" means all rights, powers, privileges and immunities whether actual, contingent or prospective;

"security" means a mortgage or charge (whether legal or equitable), debenture, hypothecation, bill of exchange, promissory note, guarantee, indemnity, lien, pledge or other security for the payment of money or for the discharge of any other liability, and includes an agreement or undertaking to give or execute any of the foregoing whether upon demand or otherwise;

"transferred employee" means an employee of C.B.C. who becomes an employee of the continuing bank in pursuance of this Act;

"undertaking" in relation to C.B.C. means—

(a) all property of C.B.C. (apart from excluded assets); and

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(b) all rights and liabilities of C.B.C. (apart from rights and liabilities relating to excluded assets).

Appointed
day.

3.—(1) The directors of the continuing bank may appoint a day to be the appointed day for the purposes of this Act.

(2) Not less than 14 days before the day appointed under subsection (1) above the continuing bank shall publish in the London Gazette a notice stating the day so appointed.

Vesting of
C.B.C.
undertaking.

4.—(1) On the appointed day the undertaking of C.B.C. shall vest in the continuing bank and the banking business of C.B.C. shall cease to be conducted by C.B.C. with effect from the appointed day.

(2) On and after the appointed day—

(a) a reference to C.B.C. in any instrument made, passed or executed before that day shall (except to the extent, if any, that the instrument relates to an excluded asset and unless the context otherwise requires) be read and construed as a reference to the continuing bank;

(b) a reference to the holder for the time being of a particular office (other than the office of a director, secretary or auditor) within C.B.C. in any instrument made or executed before that day shall be read and construed as a reference to the person for the time being holding office as managing director of the continuing bank or such other officer of the continuing bank as is designated from time to time by a managing director of the continuing bank or by any other officer acting under delegation from him.

(3) On and after the appointed day any place of business of C.B.C. wherever located shall be deemed to be a place of business of the continuing bank, but the continuing bank shall not, by virtue of this Act or the transfer of the undertaking, have any right of occupation or use of any land (being an excluded asset) situate in the United Kingdom.

(4) Without prejudice to the generality of the preceding provisions of this section but notwithstanding anything to the contrary in any other Act or law, where any land or security registered under the Land Registration Acts 1925 to 1977 or otherwise is by virtue of this Act vested in the continuing bank the continuing bank shall be deemed to be the registered proprietor of any such estate or interest of which C.B.C. is the registered proprietor and such land or security may be dealt with accordingly.

(5) Where for any reason a liability to C.B.C. immediately before the appointed day remains a liability to C.B.C. on or after that day C.B.C. shall have and may enforce the same rights in respect of that liability (including rights under any security relating thereto) as if this Act had not been passed.

5. Without prejudice to the generality of other provisions of this Transitional Act the following provisions shall have effect on and after the provisions. appointed day:—

- (a) an instruction, order, direction, mandate or authority given to C.B.C. and subsisting immediately before the appointed day (not being one relating to an excluded asset) shall be deemed to have been given to the continuing bank;
- (b) an instrument given or addressed to C.B.C. on or after the appointed day (not being one relating to an excluded asset) shall be deemed to have been given or addressed to the continuing bank;
- (c) a security held by C.B.C. as security for a debt or other liability to C.B.C. incurred before the appointed day shall be available to the continuing bank as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts owed to or liabilities to the continuing bank which are incurred on or after the appointed day; and in relation to a security the continuing bank shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which C.B.C. would have been entitled or subject if this Act had not been passed;
- (d) all the rights and liabilities of C.B.C. as bailee of documents or chattels shall be transferred to and assumed by the continuing bank;
- (e) a negotiable instrument or order for payment of money which before, on or after the appointed day is drawn on or given to or accepted or endorsed by C.B.C. or payable at a place of business of C.B.C. shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by the continuing bank instead of C.B.C. or was payable at the place of business of the continuing bank which the first mentioned place of business is by this Act deemed to be;
- (f) the relationship between C.B.C. and a customer or depositor shall become the same relationship between the continuing bank and the customer or depositor and the same rights and liabilities (including rights of set-off) shall exist between the continuing bank and the customer or depositor as existed immediately before the appointed day between C.B.C. and the customer or depositor;

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- (g) all contracts, agreements, conveyances, deeds, leases, licences, instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by or addressed to C.B.C. (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day (except to the extent that they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of C.B.C. be binding on and enforceable by, against or in favour of the continuing bank as fully and effectually in every respect as if, instead of C.B.C., the continuing bank had been the person by whom they were entered into, with whom they were made, to or by whom they were given or to whom they were addressed, as the case may be;
- (h) no legal proceedings commenced before the appointed day by, against or in favour of C.B.C. shall abate or be otherwise prejudiced by reason of this Act;
- (i) nothing effected by this Act—
- (i) shall be regarded as placing C.B.C. or the continuing bank in breach of contract or confidence or as otherwise making either of them guilty of a civil wrong;
 - (ii) shall be regarded as placing either of them in breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) shall release any surety wholly or in part from all or any of his obligations; and
- (j) nothing done or suffered by C.B.C. or the continuing bank pursuant to this Act (not being something effected by this Act)—
- (i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong;
 - (ii) shall be regarded as a breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) shall release any surety wholly or in part from all or any of his obligations;

if it would not have had that effect had it been done or suffered by C.B.C. in the absence of this Act.

6.—(1) Legal proceedings to which C.B.C. was a party immediately before the appointed day shall (save to the extent they relate to an excluded asset) be continued by or against the continuing bank as the case may be. Continuity of legal proceedings.

(2) A judgment, decree, order or award obtained by or against C.B.C. in legal proceedings commenced before the appointed day shall (save to the extent it relates to excluded assets) be enforced by or against the continuing bank.

7.—(1) All books and other documents which would before the appointed day have been admissible in evidence in respect of any matter for or against C.B.C. shall be admissible in evidence in respect of the same matter for or, as the case may be, against the continuing bank. Evidence and books and documents.

(2) In this section “ documents ” has the same meaning as in section 10 of the Civil Evidence Act 1968. 1968 c. 64.

8.—(1) Notwithstanding the transfer of the undertaking of C.B.C. to the continuing bank, the provisions of the Bankers' Books Evidence Act 1879 shall continue to apply with respect to the books of C.B.C. and to entries made therein before the appointed day. Application of Bankers' Books Evidence Act 1879.
1879 c. 11.

(2) For the purposes of section 4 of the said Act of 1879 books in subsection (1) above shall be deemed to have been the ordinary books of C.B.C. at the time of making 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) In this section “ books ” shall be construed in accordance with section 9 (2) of the said Act of 1879.

9. Notwithstanding any other provision of this Act— Officers and employees.

(a) on the appointed day each employee of C.B.C. shall cease to be an employee of C.B.C. and shall become an employee of the continuing bank, but for the purposes of every Act and other law, award, determination, contract and agreement relating to the employment of each such employee, his contract of employment shall be deemed to be unbroken and the period of his service with C.B.C. shall be deemed to have been a period of service with the continuing bank;

(b) the terms and conditions of the employment of each transferred employee with the continuing bank shall—

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- (i) on the appointed day (and thereafter until varied) be identical with the terms and conditions of his employment with C.B.C. immediately before the appointed day and be capable of variation in the same manner as they were immediately before that day; and
 - (ii) subject to any Act or other law, award or determination relating to those terms and conditions, also be capable of variation in the same manner as the general terms and conditions of employment of other persons employed by the continuing bank are capable of variation;
- (c) a transferred employee shall not be entitled to receive any payment or other benefit by reason only of his ceasing by virtue of this Act to be an employee of C.B.C.;
- (d) (i) the trust deeds and rules constituting and relating to The Commercial Banking Company of Sydney Limited U.K. Retirement Benefits Fund 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 C.B.C. (except in the name thereof) there were substituted a reference to the continuing bank;
- (ii) no transferred employee shall be entitled as of right to participate in The National Bank of Australasia Limited U.K. Retirement Benefits Plan (1974) and no employee of the continuing bank immediately before the appointed day shall be entitled as of right to participate in The Commercial Banking Company of Sydney Limited U.K. Retirement Benefits Fund;
- (e) nothing in this Act, other than paragraph (c) above, affects rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of C.B.C.; and
- (f) a director, secretary or auditor of C.B.C. does not by virtue of this Act, become a director, secretary or auditor of the continuing bank.

Appointment
of new
trustees.

10.—(1) On the appointed day all property held immediately before that day by Commercial Nominees Pty. Limited as trustee shall be vested in National Nominees Limited to be held as trustee upon the same trusts subsisting immediately before that day.

(2) On and after the appointed day—

- (a) Commercial Nominees Pty. Limited shall be wholly discharged as trustee of all the property vested by virtue of this section in National Nominees Limited;

- (b) National Nominees Limited shall have the same powers, authorities and discretions in relation to each such trust as Commercial Nominees Pty. Limited had immediately before that property was so vested; and
- (c) a reference to Commercial Nominees Pty. Limited in any instrument made or executed before the appointed day and relating to property so vested shall, unless the context otherwise requires, be read and construed as a reference to National Nominees Limited.

(3) Any discharge or appointment of a trustee and vesting of property by virtue of this section shall have effect notwithstanding anything to the contrary in any instrument or in any other Act or law.

(4) In this section, a reference to Commercial Nominees Pty. Limited holding as trustee includes a reference to Commercial Nominees Pty. Limited acting as a trustee, a custodian trustee, a nominee and a person charged with the management or administration of property.

11. The production of a Queen's Printer's copy of this Act shall, on and after the appointed day, be conclusive evidence in all courts and proceedings of the transfer of the undertaking of C.B.C. to the continuing bank and of its vesting in the continuing bank and the vesting of the property held by Commercial Nominees Pty. Limited as trustee in National Nominees Limited as trustee; and without prejudice to the generality of the foregoing, any such copy of this Act shall, in relation to all registered securities within the meaning of the Stock Transfer Act 1963 which are transferred and vested by virtue of this Act, operate for all the purposes of the said Act of 1963 or of the Stock Exchange (Completion of Bargains) Act 1976 as a duly executed stock transfer in respect of the transfer and vesting of such securities.

Evidence of transfer.

1963 c. 18.

1976 c. 47.

12.—(1) No person dealing with the continuing bank or C.B.C. (in any capacity whatsoever) nor the Chief Land Registrar nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, shall, in respect of any dealing or transaction entered into or purporting to be entered into by the continuing bank or C.B.C. be concerned to see or enquire into whether any property the subject of the dealing or transaction (whether or not that property is land) is or is not an excluded asset, or be affected by any notice, express, implied or constructive, that any such property is or is not an excluded asset.

Protection as to dealings in excluded assets.

(2) If any dealing or transaction is entered into by the continuing bank with any person in relation to or in connection with an excluded asset, it shall be deemed in favour of that person and any person claiming through or under him that the continuing bank has full power and authority to enter into that dealing or transaction as if the excluded asset had vested in the continuing bank under this Act.

(3) If any dealing or transaction is entered into by C.B.C. with any person, in relation to or in connection with any property which has vested in the continuing bank under this Act, it shall be deemed in favour of that person and any person claiming through or under him that C.B.C. has full power and authority to enter into the dealing or transaction as if the property were an excluded asset.

(4) Nothing in this section affects the liability of the continuing bank or C.B.C. to the other of them in respect of anything done, or purporting to have been done, by the continuing bank or C.B.C., as the case may be, in relation to or in connection with an excluded asset or any other property.

Application
to Scotland
and Northern
Ireland.

13.—(1) This Act shall extend to Scotland and Northern Ireland.

(2) In the application of this Act to Scotland the following provisions shall have effect:—

(a) in the construction of this Act—

(i) for the reference in subsection (2) of section 7 (Evidence and books and documents) of this Act to section 10 of the Civil Evidence Act 1968, there shall be substituted a reference to section 17 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968;

(ii) the expression “ debenture ” includes a floating charge or any instrument containing a floating charge;

(iii) the expression “ mortgage ” includes a standard security, an assignation or disposition ex facie absolute and any agreement qualifying the same, a bond and disposition or assignation in security, a cash credit bond and disposition or assignation in security, an assignation in security and any real right or burden of whatever kind in the nature of a security;

(iv) the expression “ bailee ” includes a holder on deposit or pledge;

1968 c. 64.

1968 c. 70.

(b) all mortgages expressed to be in favour of C.B.C. transferred to and vested in the continuing bank on the appointed day by virtue of this Act shall, on and from that date, have the same effect in favour of the continuing bank up to the maximum amounts secured thereby respectively in all respects as if they had been originally granted in favour of the continuing bank for such maximum amounts;

(c) to enable the continuing bank (to which by virtue of this Act there is transferred any heritable or leasehold property vested in C.B.C. redeemably or irredeemably) to complete title, if thought fit, to such property by notice of title or otherwise or to deduce title, this Act shall be deemed to be, and may be used as a general disposition, conveyance or assignation, as the case may require, of such property in favour of the continuing bank.

(3) In the application of this Act to Northern Ireland the following provisions shall have effect:—

- (a) for the reference in subsection (2) of section 7 (Evidence and books and documents) of this Act to section 10 of the Civil Evidence Act 1968 there shall be substituted a reference to section 6 of the Civil Evidence Act (Northern Ireland) 1971; and
- (b) for the reference in section 11 (Evidence of transfer) of this Act to the Stock Transfer Act 1963 there shall be substituted a reference to the Stock Transfer Act (Northern Ireland) 1963 and for the reference in that section to the Stock Exchange (Completion of Bargains) Act 1976 there shall be substituted a reference to the Stock Exchange (Completion of Bargains) (Northern Ireland) Order 1977.
- 1968 c. 64.
1971 c. 36 (N.I.).
1963 c. 18.
1963 c. 24 (N.I.).
1976 c. 47.
S.I. 1977/1254 (N.I. 21).

14. The costs, charges and expenses preliminary to and of and incidental to the preparing for, obtaining and passing of this Act, or otherwise in relation thereto, shall be paid by the continuing bank.

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CHAPTER xvii

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