

AUSTRALIAN CAPITAL TERRITORY

THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED
(MERGER) ORDINANCE 1982
82 of 1982
EXPLANATORY STATEMENT

The purpose of The Commercial Banking Company of Sydney Limited (Merger) Ordinance is to facilitate the merger in the ACT of the undertaking of The Commercial Banking Company of Sydney Limited ("CBC") and CBC Savings Bank Limited ("CBC Savings Bank") with The National Bank of Australasia Limited ("National") and The National Bank Savings Bank Limited ("National Savings Bank"). As with the legislation relating to the merger of the CBA with the Wales, this legislation removes the administrative burden that would otherwise be involved not only for the banks themselves but also for their many customers in amalgamating their businesses in the ACT. Again, similar legislation has been passed in each of the States and the Northern Territory to facilitate the merger within their respective jurisdictions.

As a result of take-over offers made by National in mid 1981 CBC has become a wholly-owned subsidiary of National. This was the first step towards a total integration and merger of the operations of the two banks, their respective savings banks and their respective nominee companies. The National and CBC intend that the business of CBC in the Territory should be conducted by National and that the business of CBC Savings Bank in the Territory should be conducted by National Savings Bank. To achieve this it is necessary that the undertakings, assets, rights and liabilities of CBC be transferred to National and that the undertakings, assets, rights and liabilities of CBC Savings Bank be transferred to National Savings Bank.

Details of the Ordinance are set out below:

Section 1 provides for the short title of the proposed Ordinance.

Section 2 provides for the Ordinance to come into operation on 1 January 1983 (the commencing date).

Section 3 provides for the definition of terms used in the Ordinance, including the titles of the banks. Five definitions are of particular importance to the operation of the Ordinance. They are;

"Excluded assets" which is a term used to describe assets which are excluded from the amalgamation and which will therefore remain vested in either CBC or CBC Savings Bank. Land and shares held otherwise than by way of security will remain vested in CBC or CBC Savings Bank, as will property held under certain trust arrangements;

"Instrument" which means an instrument, other than this Ordinance, that creates, evidences, modifies or extinguishes rights or liabilities or would do so if it or a copy of it were lodged, filed or registered under any law in force in the Territory and includes a judgment, order or process of a court;

"Property" which means property of every kind whether tangible or intangible, real or personal, 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;

"Security" which means a mortgage or charge (whether legal or equitable), debenture, 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; and

"Undertaking" which means all property and all rights and liabilities of CBC and CBC Savings Bank, except for property which is "excluded assets" and rights and liabilities relating to such "excluded assets". It is the "undertaking" thus defined of CBC and CBC Savings Bank that is to be vested by the legislation in either National or National Savings Bank as appropriate.

Section 4 provides that the Ordinance shall bind the Crown.

Section 5(1) effects the vesting of the undertaking of CBC and CBC Savings Bank in National and National Savings Bank respectively. It is thus the central provision of the legislation, being the principal means by which the transfer of each asset and the assumption or renewal of each liability of CBC and CBC Savings Bank is achieved.

Section 5(2) contains certain provisions concerning the interpretation of references in instruments made before the commencing date following upon the vesting of the "undertakings" of CBC and CBC Savings Bank pursuant to section 5(1). Paragraphs 5(2)(a) and (b) provide that (except in respect of excluded assets) wherever the name of CBC or CBC Savings Bank appears in such an instrument, it is to be interpreted as referring to National or National Savings Bank respectively. Paragraph 5(2)(c) provides that where there is in any such instrument a reference to a particular officer of CBC or CBC Savings Bank, that reference is to be interpreted as a reference to the Managing Director of National or such other officer as he nominates.

Section 5(3) provides that a place of business of CBC or CBC Savings Bank is, on the commencing date, to be deemed a place of business of National or National Savings Bank as the case may be.

Section 5(4) provides that where any estate or interest in land is registered under the Real Property Ordinance 1925 and that estate or interest in land is transferred to National or National Savings Bank, by virtue of this Ordinance, National or National Savings Bank respectively shall be taken to be the registered proprietor of the estate or interest.

Section 5(5) ensures that where, for any reason, a liability to CBC or CBC Savings Bank remains a liability to those banks after the commencing date the respective banks will continue to have the same rights and may enforce those rights in respect of the liability.

Section 6 is a transitional provision relating to CBC. Paragraphs (a) and (b) ensure that instructions, orders, directions, mandates, authorities or instruments given to CBC and in force before the commencing date are to be treated as having been given to National.

Paragraphs (c) and (d) of section 6 provide that securities held by CBC before the commencing date will be available as security for discharge of those debts or liabilities transferred to National on or after that date. Where the security held by CBC relates to future or prospective debts or liabilities it is to be available to National for the discharge of debts or liabilities to National incurred after the commencing date.

Paragraph (e) of section 6 provides for the transfer to National of the rights or liabilities of documents or chattels held by CBC as bailee before the commencing date.

Paragraph (f) of section 6 provides that where a negotiable instrument or other order for payment of money is drawn on CBC or given to or accepted or endorsed by CBC or payable at a place of business of CBC it is to be treated after the commencing date as if it had been drawn on National or given to or accepted or endorsed by National or payable at a place of business of National.

Paragraph (g) of section 6 ensures that all banker-customer/depositor relationships existing between CBC and its customers immediately before the commencing date will become, on or after that date, identical relationships between National and the relevant customers/depositors.

Paragraph (h) of section 6 deals with all contracts, agreements, conveyances, deeds, leases, licences, instruments and undertakings to which CBC is a party before the commencing date, and puts National in the same position as CBC in relation to those documents.

Paragraph (i) of section 6 ensures legal proceedings to which CBC was a party before the commencing date are not affected by the Ordinance.

Paragraph (j) of section 6 ensures that nothing effected by the Ordinance places the CBC or National in a position whereby they would be in breach of contract or confidence or otherwise guilty of a civil wrong, or would be in breach of any law in force in the Territory or of any contractual provision regarding assignment or transfer of any property or disclosure of information. It also ensures that any surety is not by reason of the Ordinance released from liability.

Paragraph (k) of section 6 makes like provision as paragraph (j) in respect of anything that might be done or suffered by CBC or National in pursuance of this Ordinance.

Section 7 makes in relation to CBC Savings Bank, the same transitional provisions as are made by section 6 in relation to CBC.

Section 8 provides that where CBC or CBC Savings Bank has, under the provisions of a lease, licence or other contract or agreement, rights in respect of the occupation or use of land that is an excluded asset, those rights may in any event be exercised by National or National Savings Bank, as the case may be. Section 8(1) covers cases where a leasehold interest in land is an "excluded asset" and, by virtue of the amalgamation, National occupies and uses that land as a place of business, for example, where CBC or CBC Savings Bank holds a lease of banking premises which, by virtue of the amalgamation, becomes National or National Savings Bank banking premises. In such a case, CBC or CBC Savings Bank, as the case may be, is not to be regarded as being in breach of its lease by reason only of the fact that National or National Savings Bank occupies and uses the relevant premises. Section 8(2) ensures CBC or CBC Savings Bank rights to the possession of the land are not affected by permitting National or National Savings Bank to exercise rights under section 8(1).

The purpose of section 9 is to ensure that legal proceedings involving CBC or CBC Savings Bank may be continued against National or National Savings Bank after the commencing date and that judgments, orders or awards for or against the former banks may be enforced by or against the latter banks.

Section 10(1) ensures that, evidence admissable for or against CBC or CBC Savings Bank interests may be admitted for or against National or National Savings Bank interests. Section 10(2) ensures the provision of Part V of the Evidence Ordinance which relates to proof of the attestation of documents will continue to apply to bankers' books kept by CBC and CBC Savings Bank and entries made therein before the commencing date. Section 10(3) is an interpretation provision defining the meaning of "bankers' books" for the purposes of section 10(2).

Section 11 concerns the rights of employees of CBC (CBC Savings Bank not having employees of its own). Paragraph (a) provides that employees previously in the service of CBC will become employees of National. It also specifically provides that where an employee of CBC who, by virtue of the Ordinance becomes an employee of National, for the purpose of any law in force in the Territory or any award, contract or determination relating to his employment, his contract of employment will be deemed to be unbroken and the period of his service with CBC will be deemed to have been a period of service with National.

Paragraph (b) of section 11 expressly provides that the terms and conditions of the employment of each relevant employee with National will be, on the commencing date (and thereafter until varied), identical with the terms and conditions of employment with CBC immediately before that date. Paragraph (b) also provides that those terms and conditions are capable of alteration in the same manner as they could have been varied before the commencing date had the employees continued with the CBC or in the same manner as the general terms and conditions of employment of other persons employed by National can be varied.

Paragraph (c) of section 11 provides that an employee of CBC who becomes an employee of National is not entitled to receive benefits (eg. long service leave) by reason only of ceasing by virtue of this Ordinance to be an employee of CBC. His ultimate entitlement, taking account of the whole of his combined service with CBC and National, will become available to him in the normal course as an employee of National.

By virtue of paragraph (d) of section 11 superannuation entitlements of CBC employees will continue to be governed by the rules of the funds concerned. Thus, former CBC employees who have not elected to become members of the National superannuation fund continue to be members of the relevant CBC fund, with the result that their entitlements continue to accrue as if they had continued to be CBC employees. Any employee who wishes to remain indefinitely under existing CBC superannuation arrangements will be entitled to so do. In this way there will be no diminution of benefits.

Paragraph (e) of section 11 provides that a director, secretary, or auditor of CBC or CBC Savings Bank will not by virtue of the Ordinance become a corresponding officer of National or National Savings Bank.

Section 12(1) vests property held, immediately before the merger, by Commercial Nominees Pty Limited as trustee, in National Nominees Limited as trustee. Section 12(2) provides that Commercial Nominees Pty Limited shall be discharged as trustee and vests in National Nominees Limited all the powers, authorities and discretions of the trust

as Commercial Nominees Pty Limited had immediately before being discharged. It provides also that; except as otherwise required, a reference to Commercial Nominees Pty Limited shall after the commencing date be read and construed as a reference to National Nominees Limited.

Section 12(3) provides that sub-sections (1) and (2) of section 12 have effect notwithstanding anything to the contrary in any instrument or in any law in force in the Territory.

Where, pursuant to such an assumption of nominee positions, National Nominees Limited becomes entitled to a registered estate or interest in land, by virtue of section 12(4) National Nominees Limited shall be taken to be the registered proprietor of that estate or interest.

Section 12(5) is an interpretation provision, clarifying the meaning of "trustee" for the purposes of the section.

Section 13 is a machinery provision designed to facilitate the registration of National, National Savings Bank or National Nominees Limited as the holders of shares, debentures and other company interests that will be vested in them by virtue of the legislation. It provides that a certificate signed by the Managing Director of National or his delegate shall be taken to be a duly stamped instrument of transfer of the securities.

Section 14 deals with a particular point arising under the Companies Act 1981. In the absence of this provision, it would be necessary for National and National Savings Bank to file separate notifications of acquisition of each company charge to which they will succeed by virtue of the legislation. The purpose of this section will be to ensure that, by filing with the National Companies and Securities Commission a statement that the undertakings of CBC and CBC Savings Bank have vested pursuant to the legislation, National and National Savings Bank will be deemed to have satisfied the obligation otherwise binding on them.

Section 15(1) ensures that any person involved with the National or National Savings Bank or CBC or CBC Savings Bank in respect of any dealing or transaction is not required to be concerned to ascertain whether any property the subject of the dealing or transaction (whether or not that property is or includes an estate or interest in land) is or is not an excluded asset. Neither will any person be affected by any notice to the effect that any such property is or is not an excluded asset. The public at large will thus be protected against the possibility of dealing with the wrong owner.

Section 15(2) permits National or National Savings Bank to enter into any dealing or transaction in relation to or in connection with an excluded asset as if the excluded asset had vested in National or National Savings Bank by virtue of this Ordinance.

Section 15(3) permits CBC or CBC Savings Bank to enter into any dealing or transaction in relation to or in connection with any property that by virtue of this Ordinance has been vested in National or National Savings Bank as if the property were an excluded asset.

Section 15(4) provides that nothing in the section alters the liability of any one or all of the banks in respect of anything they have or might have done in relation to or in connection with any excluded asset or any other property.

Section 16 declares that no duties will be payable in respect of any document or transactions executed or entered into for the purpose of the Ordinance.

Consistent with the responsibilities of the Treasurer in relation to banking matters, section 17 amends the Seat of Government (Administration) Ordinance 1930 to provide for the Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982 to be administered by the Treasurer.

Ord. No. 73/82