
**The Commercial Bank of Australia Limited
(Merger) Ordinance 1982**

No. 81 of 1982

WHEREAS by the Bank of New South Wales Act of 1850 of the State of New South Wales there was incorporated a body politic and corporate in name and in deed by the name "Bank of New South Wales":

AND WHEREAS The Commercial Bank of Australia Limited became on or about 12 February 1982 a wholly owned subsidiary of Bank of New South Wales in pursuance of action under Part VIB of the *Companies Act* 1961 of the State of Victoria:

AND WHEREAS The Commercial Savings Bank of Australia Limited is a wholly owned subsidiary of The Commercial Bank of Australia Limited and Bank of New South Wales Savings Bank Limited is a wholly owned subsidiary of Bank of New South Wales:

AND WHEREAS it is expedient in the interest of banking efficiency that the banking business conducted by The Commercial Bank of Australia Limited should be transferred to Bank of New South Wales and the banking business conducted by The Commercial Savings Bank of Australia Limited should be transferred to Bank of New South Wales Savings Bank Limited:

AND WHEREAS it is expedient that the transfers be effected by an Ordinance:

NOW THEREFORE I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act* 1910.

Dated 23 September 1982.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

JOHN HOWARD
Treasurer

An Ordinance to provide for the transfer to Bank of New South Wales of the undertaking of The Commercial Bank of Australia Limited and for the transfer to Bank of New South Wales Savings Bank Limited of the undertaking of The Commercial Savings Bank of Australia Limited and for other purposes

Short title

1. This Ordinance may be cited as *The Commercial Bank of Australia Limited (Merger) Ordinance 1982*.¹

Commencement

2. This Ordinance shall come into operation on 1 October 1982.

Interpretation

3. In this Ordinance, unless the contrary intention appears—

“CBA” means The Commercial Bank of Australia Limited;

“CBA Savings Bank” means The Commercial Savings Bank of Australia Limited;

“commencing date” means the date of commencement of this Ordinance;

“continuing bank” means the body politic and corporate incorporated by the Bank of New South Wales Act of 1850 of the State of New South Wales;

“continuing savings bank” means the corporation incorporated in New South Wales under the name “Bank of New South Wales Savings Bank Limited”;

“excluded assets” means—

- (a) documents required by law to be kept by CBA or CBA Savings Bank;
- (b) prescribed securities held, immediately before the commencing date, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security;
- (c) land held, immediately before the commencing date, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security;
- (d) property held, immediately before the commencing date, by CBA upon trust pursuant to sub-section 180X (11) of the *Companies Act* 1961 of the State of Victoria; and
- (e) property held, immediately before the commencing date, by CBA for the trustees of the CBA Staff Superannuation Fund, the CBA Female Staff Superannuation Fund or the CBA Wages Staff Superannuation Fund;

“instrument” 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;

- “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;
- “prescribed securities” means securities within the meaning of the *Securities Industry Act 1980*;
- “property” 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;
- “rights” means all rights, powers, privileges and immunities, whether actual, contingent or prospective;
- “security” 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;
- “subsidiary” has the same meaning as in the *Companies Act 1981*;
- “transferred employee” means an employee of CBA who becomes an employee of the continuing bank in pursuance of this Ordinance;
- “undertaking”, in relation to CBA or CBA Savings Bank, means—
- (a) all property of the relevant bank, other than excluded assets; and
 - (b) all rights and liabilities of the relevant bank, other than rights and liabilities relating to excluded assets.

Savings relating to certain property, &c.

4. Nothing in this Ordinance applies to or in relation to—
- (a) any property, rights and liabilities arising from, accruing under, created or evidenced by or the subject of any of the instruments described in the Schedule; or
 - (b) any of those instruments.

Crown to be bound

5. This Ordinance binds the Crown.

Vesting of undertakings of CBA and CBA Savings Bank

6. (1) On the commencing date—
- (a) the undertaking of CBA is vested in the continuing bank; and

(b) the undertaking of CBA Savings Bank is vested in the continuing savings bank.

(2) On and after the commencing date—

(a) a reference to CBA in an instrument made, passed or executed before that date shall (except to the extent 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 CBA Savings Bank in an instrument made, passed or executed before that date shall (except to the extent that the instrument relates to an excluded asset and unless the context otherwise requires) be read and construed as a reference to the continuing savings bank; and

(c) a reference to the holder for the time being of a particular office (other than the office of a director, secretary or auditor) within CBA or CBA Savings Bank in an instrument made or executed before that date shall be read and construed as a reference to the person for the time being holding office as Chief General Manager of the continuing bank or such other officer of the continuing bank or the continuing savings bank as is designated from time to time by the Chief General Manager of the continuing bank or by any other officer acting under delegation from him.

(3) On and after the commencing date—

(a) any place of business of CBA shall be deemed to be a place of business of the continuing bank; and

(b) any place of business of CBA Savings Bank shall be deemed to be a place of business of the continuing savings bank.

(4) Without prejudice to the generality of the preceding provisions of this section but notwithstanding anything to the contrary in any other law in force in the Territory, where any registered estate or interest in land under the operation of the *Real Property Ordinance* 1925 is, by virtue of this Ordinance, vested in the continuing bank or in the continuing savings bank—

(a) the continuing bank shall be taken to be the registered proprietor of any such estate or interest of which CBA is the registered proprietor; and

(b) the continuing savings bank shall be taken to be the registered proprietor of any such estate or interest of which CBA Savings Bank is the registered proprietor,

and the estate or interest may be dealt with accordingly.

(5) Where, for any reason—

(a) a liability to CBA immediately before the commencing date remains a liability to CBA on or after that date; or

(b) a liability to CBA Savings Bank immediately before the commencing date remains a liability to CBA Savings Bank on or after that date,

CBA or CBA Savings Bank, as the case may be, shall have and may enforce the same rights in respect of that liability (including rights under any security relating to that liability) as if this Ordinance had not been made.

Transitional provision—CBA

7. Without limiting the generality of other provisions of this Ordinance, on and after the commencing date—

- (a) an instruction, order, direction, mandate or authority given to CBA and subsisting immediately before the commencing date, not being an instruction, order, direction, mandate or authority relating to an excluded asset, shall be deemed to have been given to the continuing bank;
- (b) an instrument given or addressed to CBA on or after the commencing date, not being an instrument relating to an excluded asset, shall be deemed to have been given or addressed to the continuing bank;
- (c) a security held by CBA as security for a debt or other liability to CBA incurred before the commencing date—
 - (i) shall be available to the continuing bank as security for the discharge of that debt or liability; and
 - (ii) 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 that are incurred on or after the commencing date;
- (d) the continuing bank shall, in relation to a security referred to in paragraph (c), be entitled to all the rights and priorities (howsoever arising) and be subject to all liabilities to which CBA would have been entitled or subject if this Ordinance had not been made;
- (e) all the rights and liabilities of CBA as bailee of documents or chattels shall be transferred to and assumed by the continuing bank;
- (f) a negotiable instrument or order for payment of money that before, on or after the commencing date is drawn on, given to or accepted or endorsed by CBA or payable at a place of business of CBA shall have the same effect on and after the commencing date as if it had been drawn on, given to or accepted or endorsed by the continuing bank instead of CBA or was payable at the place of business of the continuing bank which the first-mentioned place of business is by this Ordinance deemed to be;
- (g) the relationship between CBA 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 commencing date between CBA and the customer or depositor;
- (h) 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 CBA

(whether alone or with any other person) before the commencing date and in force immediately before that date (except in so far as they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of CBA, 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 CBA, 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;

- (i) no legal proceedings commenced before the commencing date by, against or in favour of CBA shall abate or be otherwise prejudiced by reason of this Ordinance;
- (j) nothing effected by this Ordinance—
 - (i) shall be regarded as placing CBA 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 law in force in the Territory or any 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
- (k) nothing done or suffered by CBA or the continuing bank pursuant to this Ordinance, not being something effected by this Ordinance—
 - (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 law in force in the Territory or any 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 CBA in the absence of this Ordinance.

Transitional provision—CBA Savings Bank

8. Without limiting the generality of other provisions of this Ordinance, on and after the commencing date—

- (a) an instruction, order, direction, mandate or authority given to CBA Savings Bank and subsisting immediately before the commencing date, not being an instruction, order, direction, mandate or authority relating to an excluded asset, shall be deemed to have been given to the continuing savings bank;
- (b) an instrument given or addressed to CBA Savings Bank on or after the commencing date, not being an instrument relating to an excluded

- asset, shall be deemed to have been given or addressed to the continuing savings bank;
- (c) a security held by CBA Savings Bank as security for a debt or other liability to CBA Savings Bank incurred before the commencing date—
 - (i) shall be available to the continuing savings bank as security for the discharge of that debt or liability; and
 - (ii) 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 savings bank that are incurred on or after the commencing date;
 - (d) the continuing savings bank shall, in relation to a security referred to in paragraph (c), be entitled to all the rights and priorities (howsoever arising) and be subject to all liabilities to which CBA Savings Bank would have been entitled or subject if this Ordinance had not been made;
 - (e) all the rights and liabilities of CBA Savings Bank as bailee of documents or chattels shall be transferred to and assumed by the continuing savings bank;
 - (f) a negotiable instrument or order for payment of money that before, on or after the commencing date is drawn on, given to or accepted or endorsed by CBA Savings Bank or payable at a place of business of CBA Savings Bank shall have the same effect on and after the commencing date as if it had been drawn on, given to or accepted or endorsed by the continuing savings bank instead of CBA Savings Bank or was payable at the place of business of the continuing savings bank which the first-mentioned place of business is by this Ordinance deemed to be;
 - (g) the relationship between CBA Savings Bank and a customer or depositor shall become the same relationship between the continuing savings bank and the customer or depositor and the same rights and liabilities, including rights of set-off, shall exist between the continuing savings bank and the customer or depositor as existed immediately before the commencing date between CBA Savings Bank and the customer or depositor;
 - (h) 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 CBA Savings Bank (whether alone or with any other person) before the commencing date and in force immediately before that date (except in so far as they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of CBA Savings Bank, be binding on and enforceable by, against or in favour of the continuing savings bank as fully and effectually in every respect as if, instead of CBA Savings Bank, the continuing savings 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;

- (i) no legal proceedings commenced before the commencing date by, against or in favour of CBA Savings Bank shall abate or be otherwise prejudiced by reason of this Ordinance;
- (j) nothing effected by this Ordinance—
 - (i) shall be regarded as placing CBA Savings Bank or the continuing savings 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 law in force in the Territory or any 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
- (k) nothing done or suffered by CBA Savings Bank or the continuing savings bank pursuant to this Ordinance, not being something effected by this Ordinance—
 - (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 law in force in the Territory or any 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 CBA Savings Bank in the absence of this Ordinance.

Assignment and subletting of leases

9. (1) Where, under the provisions of a lease, licence or other contract or agreement, CBA or CBA Savings Bank has rights in respect of the occupation or use of land, being an excluded asset, those rights may, notwithstanding that there has been no assignment, transfer, underletting or other disposition by CBA or CBA Savings Bank, be exercised by the continuing bank or the continuing savings bank, as the case may be.

(2) For the purposes of a lease, licence or other contract or agreement relating to the occupation or use of land, CBA or CBA Savings Bank does not part with possession of land by permitting the continuing bank or the continuing savings bank, as the case may be, to exercise rights under sub-section (1) in respect of the land.

Continuity of legal proceedings

10. (1) Legal proceedings to which CBA or CBA Savings Bank was a party immediately before the commencing date may be continued by or against the continuing bank or the continuing savings bank, as the case may be.

(2) A judgment, order or award obtained by or against CBA or CBA Savings Bank in legal proceedings commenced before the commencing date may be enforced by or against the continuing bank or the continuing savings bank, as the case may be.

Evidence

11. (1) Documentary or other evidence which would have been admissible for or against the interests of CBA or CBA Savings Bank if this Ordinance had not been made shall be admissible for or against the interests of the continuing bank or the continuing savings bank, as the case may be.

(2) Notwithstanding the transfer of the undertakings of CBA and CBA Savings Bank to the continuing bank and the continuing savings bank respectively, the provisions of Part V of the *Evidence Ordinance* 1971 continue to apply to and in relation to the bankers' books of CBA and CBA Savings Bank and to entries made in those books before the commencing date.

(3) In sub-section (2), "bankers' books" has the same meaning as in the *Evidence Ordinance* 1971.

Officers and employees

12. Notwithstanding any other provision of this Ordinance—

- (a) on the commencing date each employee of CBA shall cease to be an employee of CBA and shall become an employee of the continuing bank but, for the purposes of any law in force in the Territory or any award, determination, contract or 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 CBA 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—
 - (i) on the commencing date (and thereafter until varied) be identical with the terms and conditions of his employment with CBA immediately before the commencing date and be capable of variation in the same manner as they were immediately before that date; and
 - (ii) subject to any law in force in the Territory or any 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 Ordinance to be an employee of CBA;
- (d) nothing in this Ordinance, other than paragraph (c), affects rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of CBA; and
- (e) a director, secretary or auditor of CBA or CBA Savings Bank does not, by virtue of this Ordinance, become a director, secretary or auditor of the continuing bank or the continuing savings bank.

Appointment of new trustees

13. (1) The continuing bank may, at any time within 3 months after the commencing date, by instrument executed under its seal and published in the *Gazette*, declare that a corporation that is a subsidiary of the continuing bank and is named in the instrument as new trustee of such trusts subsisting immediately before the commencing date as are specified in the instrument is appointed in the place of another corporation that was, immediately before that date, a subsidiary of CBA and is named in the instrument as the retiring trustee of those trusts.

(2) Upon the instrument referred to in sub-section (1) being published in the *Gazette*—

- (a) the corporation named in the instrument as the retiring trustee shall be wholly discharged from the trusts specified in the instrument;
- (b) the corporation named in the instrument as new trustee shall be trustee of those trusts in the place of the corporation named in the instrument as retiring trustee and shall have the same powers, authorities and discretions in relation to each such trust as the retiring trustee had immediately before being discharged; and
- (c) all property subject to those trusts and vested in the retiring trustee shall be vested in the corporation named in the instrument as new trustee.

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

(4) Subject to sub-section (5) but notwithstanding anything to the contrary in any other law in force in the Territory, where any registered estate or interest in land under the operation of the *Real Property Ordinance* 1925 is, by virtue of this section, vested in a corporation, that corporation shall be taken to be the registered proprietor of that estate or interest and the estate or interest may be dealt with accordingly.

(5) A corporation shall not be taken to be the registered proprietor of an estate or interest referred to in sub-section (4) until a copy of the instrument referred to in sub-section (1) has been lodged with the Registrar of Titles.

(6) In this section, "trustee" has the same meaning as in the Trustee Act, 1925 of the State of New South Wales, in its application in the Territory, but extends to a nominee, a custodian trustee and a person charged with the management or administration of property.

Transfer of certain shares

14. (1) Where prescribed securities are, by virtue of this Ordinance, vested in the continuing bank, the continuing savings bank or a subsidiary of the continuing bank, a certificate signed by the Chief General Manager of the continuing bank or by an officer acting under delegation from him stating that the prescribed securities have so vested shall, notwithstanding any other law in force in the Territory or the provisions of any instrument, be taken to be a sufficient duly stamped instrument of transfer of those prescribed securities.

(2) Sub-section (1) applies only to and in relation to prescribed securities—

- (a) that, when vested in the continuing bank or the continuing savings bank, will be held by way of security; or
- (b) that are vested in a subsidiary of the continuing bank by the operation of section 13.

Company charges

15. Sub-section 206 (1) of the *Companies Act* 1981 shall be deemed to have been complied with in relation to all charges of which the continuing bank or the continuing savings bank becomes the holder by virtue of this Ordinance if there is lodged with the National Companies and Securities Commission a certificate signed by the Chief General Manager of the continuing bank or by an officer acting under delegation from him stating that—

- (a) the undertaking of CBA has, by virtue of this Ordinance, become vested in the continuing bank; and
- (b) the undertaking of CBA Savings Bank has, by virtue of this Ordinance, become vested in the continuing savings bank.

Protection of persons in respect of dealings with certain assets

16. (1) No person dealing—

- (a) with the continuing bank or CBA (in any capacity whatsoever); or
- (b) with the continuing savings bank or CBA Savings Bank (in any capacity whatsoever),

nor the Registrar of Titles, 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, the continuing savings bank, CBA or CBA Savings Bank be concerned to see or inquire into 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, or be affected by any notice, express, implied or constructive, that any such property is or is not an excluded asset.

(2) If any dealing or transaction is entered into by the continuing bank or the continuing savings 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 or the continuing savings bank, as the case may be, has full power and authority to enter into that dealing or transaction as if the excluded asset had vested in the continuing bank or the continuing savings bank, as the case may be, under this Ordinance.

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

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

Exemption from duty

17. Notwithstanding anything to the contrary in any other law in force in the Territory, no duty of any kind is chargeable or payable on any instrument, certificate or document or in respect of any act or transaction executed, done, suffered or entered into for the purposes of this Ordinance or of a corresponding law of the Commonwealth or of a State or another Territory.

Amendment of *Seat of Government (Administration) Ordinance 1930*

18. The Second Schedule to the *Seat of Government (Administration) Ordinance 1930* is amended by omitting from Part 3—

“*Companies (Life Insurance Holding Companies) Ordinance 1968*”
and substituting—

“*The Commercial Bank of Australia Limited (Merger) Ordinance 1982*”.

SCHEDULE

Section 4

Deed dated 27 June 1978 made between the continuing bank of the one part and CBA of the other part entitled "Equity Participants' Deed".

Agreement dated 27 June 1978 made between the continuing bank and CBA of the one part and Chase-N.B.A. Group Limited of the other part entitled "Management Agreement".

Agreement dated 27 June 1978 made between Qantas Airways Limited of the one part and the continuing bank and CBA of the other part entitled "Equipment Purchase Agreement".

Deed of Assignment dated 27 June 1978 between Qantas Airways Limited of the one part and the continuing bank and CBA of the other part.

Agreement dated 27 June 1978 made between the continuing bank and CBA of the first part, Government Insurance Office of New South Wales of the second part and Qantas Airways Limited of the third part entitled "Loan Agreement".

Deed of Lease dated 27 June 1978 made between the continuing bank and CBA of the one part and Qantas Airways Limited of the other part.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 27 September 1982.