



I assent.

[L.S.]

J. I. ULUIVUDA  
President

[24 December 2001]

## AN ACT

TO PROVIDE FOR THE TRANSFER TO AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED OF FIJI UNDERTAKING OF BANK OF HAWAII AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands—

*Short title*

1. This Act may be cited as the Australia and New Zealand Banking Group (Bank of Hawaii) Act 2001.

*Commencement*

2. This Act comes into force on a date or dates to be appointed by the Minister by notice in the *Gazette*.

*Interpretation*

3.—(1) In this Act, unless the context otherwise requires—

‘appointed time’ means The Fiji Islands standard time on the date this Act comes into force;

‘ANZ’ means Australia and New Zealand Banking Group Limited (ABN 11 005 357 522);

‘BOH’ means the Bank of Hawaii;

‘the business’ means all the banking and safe deposit business of BOH in or conducted from the Fiji Islands immediately prior to the appointed time;

'customer' includes any person, proprietary unit, board, commission, committee, instrumentality or government with whom the BOH in operating the business conducted a banking, safe deposit or other business relationship immediately prior to the appointed time;

'land' includes any estate, interest or right (whether legal or equitable) in, over or under any land;

'liabilities' means any duties and obligations in respect of the business and the property, other than all actions, suits or proceedings, whether civil, criminal or administrative, pending or proposed as of the appointed time;

'function' includes power, authority and duty;

'property' has the meaning given by section 2 of the Interpretation Act and includes any assets of the BOH reflected on the statutory account records of the business as of the appointed time and, to the extent not included therein, any other assets solely used to operate the business including any security, rights and powers, vested in or exercisable by the BOH;

'Registrar' means the person holding such office under a written law;

'security' means a mortgage (whether legal or equitable), charge, debenture, bill of exchange, bills of sale, promissory note, guarantee, lien, deeds, pledge or any other means of securing the payment of a debt, whether present or future or the discharge of an obligation or liability, whether actual or contingent, and includes any other instruments created by and brought into existence by BOH in the context of or relating to the business prior to the appointed time evidencing the same;

'undertaking' means the business and all the property wherever situate immediately prior to the appointed time.

(2) Subject to subsection (3) or (4), where—

(a) any written law other than this Act; or

(b) any document whensoever made or executed;

contains any express or implied reference to the BOH in this context of or relating to the business, the liabilities or the property such reference shall, on and after the appointed time, be read and construed as if it were a reference to the ANZ unless context otherwise requires.

(3) Notwithstanding subsection (2), a reference to the BOH in any document constituting or relating to any pension scheme, provident fund or officers' guarantee fund of the BOH in respect of the business in force immediately prior to the appointed time is to be read and construed as a reference to the ANZ and for the purpose of ascertaining and calculating the right to benefit under it, service or employment with the BOH prior to the appointed time shall be taken into account as if it were service or employment with the

ANZ, but the coming into force of this section shall not of itself give rise to any claim to benefit under any such scheme or fund or operate to cause a person to become a member of another pension scheme, provident fund or officers' guarantee fund.

(4) Without prejudice to the generality of subsection (2), where by any order of the Court or by any trust deed, settlement, covenant or agreement or where by any will whether made or executed prior to, on or after the appointed time, the BOH (whether alone or with any person) in the context of or relating to the business or the property was or is granted letters of administration or appointed trustee, executor, guardian or in any other fiduciary capacity, such order, trust deed, settlement, covenant, agreement or will shall not fail by reason of anything in this Act but shall as from the appointed time be read and construed as if, for any reference in it to the BOH, there was substituted a reference to the ANZ.

(5) For the avoidance of doubt, this Act applies to—

- (a) all proprietary units, boards, commissions, committees, instrumentalities, governments or persons—
  - (i) resident or domiciled in the Fiji Islands;
  - (ii) who have carried on business in the Fiji Islands;
  - (iii) who are customers of the BOH;
  - (iv) who are bound by contract express or implied to have the whole or part of their rights and obligations performed enforced or determined according to the laws of the Fiji Islands; or
  - (v) who are otherwise subject to the jurisdiction of the Courts of the Fiji Islands;
- (b) all property moveable or immovable situated in the Fiji Islands or in respect of whose owner this Act applies pursuant to paragraph (a).

(6) Without prejudice to any other provisions of this Act, any act or omission by the BOH since the appointed time in relation to:

- (a) any customer of the business;
- (b) the property;
- (c) the undertaking; or
- (d) any security;

shall, on and after the appointed time, be deemed to be an act or omission of the ANZ.

(7) Subsection (6) does not affect or modify the position between the ANZ and the BOH.

*Vesting of BOH undertaking in ANZ*

4. At the appointed time, and notwithstanding the provisions of any written law, the undertaking of the BOH shall be deemed and declared by virtue of this Act to have been divested from the BOH and vested in the ANZ absolutely.

*Transfer of Contracts, etc*

5.—(1) All property, security, contracts, agreements, conveyances, deeds, leases, licences, permissions, consents and other instruments or undertakings entered into by or made with or addressed to the BOH (whether alone or with any other person) relating to the business, the liabilities or the property in force at any time prior to the appointed time shall on and after that time to the extent that they were at any time before that time binding upon enforceable by or against the BOH, be deemed to be binding and have effect in every respect in favour of or against the ANZ as if, instead of the BOH, the ANZ had been a party to it or bound by it or entitled to its benefit.

(2) This section applies to any contract of employment, oral or written, entered into by BOH before the appointed time except contracts of employment with a person who is not a citizen of the Fiji Islands.

(3) All documents or instruments brought into existence for the purpose of evidencing, recording or effecting the matters referred to in subsection (1) are exempted from stamp duty under the Stamp Duties Act.

(4) Without limiting subsection (3), the Stamp Duties Act does not—

- (a) apply to any agreement brought into existence for the purpose of recording, evidencing or effecting any transfer of property of the BOH to the ANZ or the vesting of such property in the ANZ;
- (b) apply to any instrument recording evidencing or effecting anything which is the subject of this Act; or
- (c) impose or attract any duty, fine, impost, penalty or assessment required or reasonably necessary to give effect to this Act.

(5) Without limiting the generality of any other provision of this Act, nothing in the State Acquisition of Lands Act, State Lands Act, Forest Act, Land Sales Act, Land Transfer Act, Companies Act, Consumer Credit Act 1999, Property Law Act or any other written law invalidates or affects any mortgage or transfer, bills of sale or security given or made to the BOH and to which the ANZ has by virtue of this Act become entitled to in the place of the BOH.

(6) Nothing in any written law affects any security or transfer given or made to the BOH to secure any loan or interest on such loan or any remedy to enforce such loan. Any such mortgage or transfer or security may be given or made, and any sale or foreclosure may be effected under it, notwithstanding that the land or chattels the subject of the mortgage, transfer or security or any part of it could not by the terms of any written law be transferred, assigned or otherwise dealt with.

(7) No further consent, permit, certification, ratification, fees or charges, registration fees of any kind, filing fees, lodgement fees, or fees of any kind whatsoever shall be required to be given or paid in respect of any document or instrument sought to be registered for the purpose of evidencing, recording or effecting the matters referred to in subsections (1) and (3) notwithstanding any provision to the contrary in any written law.

(8) The exercise by the ANZ of any power of sale, re-entry or seizure or otherwise under any security vested in the ANZ under this Act shall be valid and effective at law and in equity notwithstanding any non-compliance with any written law.

(9) Any power or remedy conferred upon the ANZ under this Act shall not be limited or restricted in any way by the provisions of or non-compliance with any written law.

*Transfer of Business*

6. Without prejudice to the generality of the foregoing provisions of this Act, the following provisions shall have effect with relation to the business of BOH—

- (a) the relationship between the BOH and a customer at any office or branch of the BOH in the Fiji Islands shall on and after the appointed time be between the ANZ and such customer and shall give rise to the same rights and the same duties (including rights of set-off) as would have existed prior to that time as if such relationship had been between the ANZ and the customer, and so that any instruction, order, direction, mandate or authority given by such customer to the BOH and subsisting at or given after the appointed time shall, unless revoked or cancelled, be deemed to have been given to the ANZ;
- (b) any security held by the BOH as security for the payment of debts or liabilities (whether present or future, actual or contingent) of any person shall be transferred or deemed to be transferred to the ANZ on the appointed time and shall be held by and be available to the ANZ as security for the payment of such debts and liabilities to the ANZ: and if security extends to future advances or to future liabilities of such person, the security shall as on and after that time be held by and be available to the ANZ as security for future advances to such person by, and future liabilities of such person to, the ANZ to the same extent to which future advances by, or liabilities to, the BOH were secured at any time prior that time;
- (c) the ANZ shall, in relation to any security transferred or deemed to have been transferred to it in accordance with this Act and the moneys thereby secured, be entitled to the same rights and priorities and subject to the same obligations and incidents as the BOH would have been entitled and subject to if the same had continued to be held by the BOH;
- (d) the custody of any document, goods or thing held by the BOH as bailee for any other person at any office or branch of the BOH in the Fiji Islands shall be transferred or deemed to be transferred to the ANZ on the appointed time and the rights and obligations of the BOH under any contract of bailment relating to such document, goods or thing shall be transferred or deemed to be transferred at that time to the ANZ;
- (e) any negotiable instrument or order for payment of money whether drawn, given, accepted or endorsed prior to, on, or after the appointed time, which

is expressed to be drawn on, or given to, or accepted or endorsed by, the BOH in the context of or relating to the business or the property, or payable at any place of business of the BOH in the Fiji Islands shall have the same effect on and after the appointed time as if it had been drawn on, or given to, or accepted or endorsed by, or payable at the same place of business of the ANZ;

- (f) nothing in or about the operation of this Act shall disturb the priority, prior to the appointed time, of any security or other right relative to those held by any third party other than the BOH and the ANZ;
- (g) notwithstanding the operation of this Act, all advances and payments made by the ANZ to or for the benefit of former depositors or customers of the BOH shall be deemed to be lawfully made and may be charged to the account of any such depositor or customer;
- (h) this Act does not affect or alter the respective rights and obligations of any party other than in respect of the business.

*Actions, etc not to abate*

7.—(1) Subject to subsection (2), any action, arbitration or proceeding and any cause of action, arbitration or proceeding which shall at the appointed time be pending or existing by or in favour of the BOH in the context of or in relation to the business or the property shall not abate or be discontinued or be in any way prejudicially affected by this Act, but the same may be prosecuted, continued and enforced by or in favour of the ANZ as and when it might be prosecuted, continued and enforced by or in favour of the BOH if this Act had not been made.

(2) Any action, suit or proceeding, whether civil, criminal or administrative, pending or threatened against BOH as of the appointed time shall not vest in ANZ, shall remain with BOH and shall not abate, be discontinued or be in any way prejudicially affected by this Act.

*Evidence legislation*

8.—(1) Subject to section 7(2), any book or other document which if this Act had not been made, would have been evidence in respect of any matter for or against the BOH shall, on and after the appointed time, be admitted in evidence in respect of the same matter for or against the ANZ.

(2) In this section 'document' has the meaning given by section 2(1) of the Evidence Act (Cap. 41) and section 2(4) of the Civil Evidence Decree 2000.

*Bankers Books Evidence Act*

9.—(1) Notwithstanding the transfer of the business to the ANZ under and in terms of this Act, the Bankers' Books Evidence Act (Cap.45) continues to apply with respect to the books of the BOH transferred to the ANZ by virtue of this Act and to entries made in such books prior to the appointed time.

(2) In this section, 'books' include ledgers, day books, cash books, account books, microfiche, computer disks, software programmes and such other electronic and magnetic records and retrieval systems compiled by BOH and all other books and records used in the business.

*Land titles*

10.—(1) The Registrar of Titles shall upon application and lodgement for registration made to him or her by the ANZ—

- (a) make all such entries upon any grant or certificate of title or mortgage or lease or other instrument or document under this control or custody as may be necessary or expedient in consequence of the transfer of any property under this Act and the holder of any such grant, certificate of title, or mortgage or lease or other instrument or document shall produce the same to the Registrar of Titles for that purpose. No registration fees or other fees or charges shall be payable by ANZ or BOH in relation to each such registration;
- (b) make such other memorials or entries in any public record as may be necessary or expedient to record the transfer of property to the ANZ under this Act.

(2) This Act overrides the provisions of any written law relating to or affecting the transfer of property, land titles or securities and if there is any conflict, this Act prevails.

*Companies*

11.—(1) The Registrar of Companies shall, upon application made to him or her by the ANZ, make all such entries upon or in relation to any security and the register of charges under the Companies Act, as may be necessary or expedient to record the transfer of property to the ANZ under this Act. No fees or charges shall be payable by ANZ or BOH in relation to each such entry, application or register examination.

(2) This Act overrides the provisions of any written law relating to or affecting companies and if there is any conflict, this Act prevails.

*Deeds etc.*

12. All other Registrars as defined in Section 3 but excluding those referred to in sections 10 and 11 shall act to like effect as required by the Registrar of Titles under section 10 upon application by the ANZ for the making of entries or records with respect to any property or security in any public record under the control or direction of any such Registrar. No fees or charges shall be payable by ANZ or BOH in relation to any such application, or register entry or examination.

*Entry by ANZ into possession etc.*

13.—(1) The entry of the ANZ upon, or the use, enjoyment or occupation by the ANZ, of any land located in the Fiji Islands which prior to the appointed time was used enjoyed or occupied by the BOH as tenant, subtenant or licensee shall not constitute an assignment, transfer, underletting, devolution, parting with possession or other disposition of that land

for the purpose of any provision relating to assignment, transfer, underletting, devolution, parting with possession or other disposition contained in any instrument in existence at the appointed time and relating to that land.

(2) No transfer or vesting effected by virtue of this Act invalidates, discharges or renders unenforceable any contract or security.

*Regulations*

14. The Minister may make regulations to give effect to the provisions of this Act.

Passed by the House of Representatives this 5th day of December 2001.

Passed by the Senate this 13th day of December 2001.