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BANK MERGERS ACT 1997

BANK MERGERS (NATIONAL AUSTRALIA BANK AND BANK OF NEW ZEALAND) REGULATIONS 1997

WESTERN AUSTRALIA

BANK MERGERS (NATIONAL AUSTRALIA BANK AND BANK OF NEW ZEALAND) REGULATIONS 1997

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BANK MERGERS ACT 1997

BANK MERGERS (NATIONAL AUSTRALIA BANK AND BANK OF NEW ZEALAND) REGULATIONS 1997

Made by the Governor in Executive Council.

PART 1 — PRELIMINARY

Citation

1. These regulations may be cited as the *Bank Mergers (National Australia Bank and Bank of New Zealand) Regulations 1997*.

Commencement

2. These regulations come into operation on 30 June 1997 at 6 p.m. Eastern Standard Time on that day.

Definitions

3. In these regulations, unless the contrary intention appears —

"BNZ" means Bank of New Zealand A.R.B.N. 000 288;

"BNZ employee" means a person employed by BNZ in Western Australia;

"chief executive officer" means the officer in charge of the day to day management of the affairs of National or a person appointed by that officer in writing;

"commencement time" means the time referred to in regulation 2;

"excluded asset" means —

(a) a document required to be kept by BNZ under the Corporations Law or any other law; or

(b) an asset listed in a certificate signed by the chief executive officer and received by the Treasurer before the commencement time;

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"liabilities" includes duties, obligations and incidents of every description, whether actual, contingent or prospective, but does not include any duty, obligation or incident relating to an excluded asset;

"National" means National Australia Bank Limited A.C.N. 004 044 937;

"property" means property and assets of every description, and includes securities, rights and powers of every description;

"register" includes a book of registry and an index relating to registration;

"security" includes a mortgage (whether legal or equitable), charge, debenture, bill of exchange, promissory note, guarantee, lien, pledge or 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;

"undertaking of BNZ" means the business and all of the property of BNZ (except any excluded assets and any right or power of BNZ relating to any excluded assets) vested in or belonging to or held by that bank immediately before the commencement time and all of the liabilities to which that bank is subject immediately before the commencement time.

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PART 2 — VESTING OF UNDERTAKING OF BNZ IN NATIONAL

Vesting of undertaking

4. (1) At the commencement time, the undertaking of BNZ is by virtue of this Part divested from BNZ and vested in National.

(2) Subregulation (1) has no effect in relation to the employment of BNZ employees.

Contracts and instruments

5. (1) All contracts, agreements, conveyances, deeds, leases, licences and other instruments or undertakings entered into by or made with, or addressed to, BNZ (whether alone or with any other person) in force immediately before the commencement time are on and after that time to the extent that they were immediately before that time binding upon and enforceable by, or against, BNZ, binding and of full force and effect in every respect in favour of, or against, National.

(2) Subregulation (1) does not apply to any contract, agreement, conveyance, deed, lease, licence, instrument or undertaking relating to —

(a) an excluded asset;

(b) the employment of a BNZ employee; or

(c) a provident, benefit, superannuation or retirement fund relating to BNZ employees.

(3) A director, secretary or auditor of BNZ is not by reason only of this Part a director, secretary or auditor (as the case may be) of National.

Relationship with customers and depositors

6. (1) Without limiting regulations 4 and 5, the relationship between BNZ and a customer or depositor of that bank is, after the commencement time, between National and that customer or depositor, and gives rise to the same rights and the same duties (including rights of set-off) as would have existed at that time if that relationship had been between National and the customer or depositor.

(2) Any instruction, order, direction, mandate or authority given by a customer or depositor of BNZ to that bank and subsisting on or given after the commencement time is, unless and until revoked or cancelled, deemed to have been given to National.

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PART 3 — EFFECT OF MERGER

Operation of this Part

7. Unless the contrary intention appears, this Part does not limit regulations 4 and 5.

BNZ employees

8. (1) Each BNZ employee is to be engaged exclusively in the provision of services to National and is subject to the direction and control of the officers of National who are responsible for the control of the business of National in Western Australia.

(2) Subregulation (1) applies subject to any law or determination relating to the employment of a BNZ employee.

Securities

9. (1) A security held by BNZ as security for the payment of the debts or liabilities (whether present or future, certain or contingent) of a person is by virtue of Part 2 transferred to National at the commencement time, and is to be held by and be available to National as security for the payment of those debts and liabilities to National (but not, by reason only of Part 2, as security for any debt or liability of that person to National existing immediately before that time).

(2) A security referred to in subregulation (1) which extends to future advances to, or to future liabilities of, a person, is, subject to any agreement between National and that person, to be held by and be available to National as security for future advances to that person by, and future liabilities of that person to, National, to the same extent to which future advances by, or liabilities to, BNZ were secured immediately before that time.

(3) National is, in relation to any security transferred under Part 2 and the money secured by the security, entitled to the same rights and priorities and subject to the same liabilities as BNZ would have been entitled and subject to, if the security had continued to be held by BNZ.

(4) Despite subregulations (1), (2) and (3) and regulations 4 and 5, National is, in relation to any security —

(a) held by it over any money on deposit with BNZ immediately before the commencement time, entitled to the same rights and priorities and subject to the same liabilities as it would have been had the money on deposit continued to be held by BNZ; and

(b) held by BNZ immediately before the commencement time over money on deposit with National, entitled to the same rights and priorities and subject to the same liabilities as BNZ would have been had the security continued to be held by BNZ.

Custody of documents, goods, etc.

10. The custody of any document, goods or thing held by BNZ as bailee for any other person at any office or branch or agency of BNZ is by virtue of Part 2 transferred to National at the commencement time, and the rights, duties and liabilities of BNZ under any contract of bailment relating to the document, goods or thing are transferred at that time to National.

Negotiable instruments

11. Any negotiable instrument or order for the payment of money, whether drawn, given, accepted or endorsed before, at or after the commencement time, which is expressed to be drawn by, drawn on, or given to, or accepted or endorsed by BNZ, or payable at any place of business of BNZ, has the same effect after the commencement time as if it had been drawn by, drawn on, or given to, or accepted or endorsed by, National, or payable at the same place of business of National.

Information

12. Any information held immediately before the commencement time by BNZ relating to a customer or depositor of that bank is available to and may be used by National after the commencement time.

Legal proceedings

13. (1) This regulation applies to —

(a) any action, arbitration, regulatory inquiry or proceeding or cause of action which is at the commencement time pending or existing by, against, in respect of, or in favour of, BNZ; and

(b) any cause of action, arbitration, regulatory inquiry or proceeding by, against, in respect of, or in favour of, BNZ, which arises after the commencement time in respect of a contract made by BNZ before the commencement time or which arises in respect of anything done or omitted to be done by BNZ before the commencement time,

but does not apply to any action, arbitration, regulatory inquiry or proceeding or to any cause of action relating to —

(c) an excluded asset;

(d) the employment of a BNZ employee; or

(e) a provident, benefit, superannuation or retirement fund relating to BNZ employees.

(2) Any action, arbitration, regulatory inquiry or proceeding and any cause of action, arbitration, regulatory inquiry or proceeding to which this regulation applies, is not abated or discontinued or in any way prejudicially affected by reason of Part 2, and may, without any further act, deed or instrument other than any appropriate amendment of the records of the relevant court or tribunal, be prosecuted and continued and enforced by or against National, in its own name as and when it might have been prosecuted, continued and enforced by or against BNZ if these regulations had not been made.

(3) Despite subregulation (2), the court, tribunal or other person making or entering any judgment, order or award for the payment of any sum of money, whether ascertained or to be ascertained, against National in any legal or arbitral proceeding to which this regulation applies may, at the request of any party in whose favour the judgment, order or award is being made or entered, make or enter the judgment, order or award against both BNZ and National, and the judgment, order or award may, when so made or entered, be enforced against both BNZ and National.

Amendment of Court documents where National erroneously made a party

14. (1) Any party to any action, arbitration, regulatory inquiry or proceeding relating to an excluded asset or a BNZ employee is entitled at any stage to seek leave to amend any writ, pleading or other document filed by the party in the action, arbitration, regulatory inquiry or proceeding by substituting for the name of National the name of BNZ as party.

(2) No order is to be made against any party so amending to pay to National or to BNZ any costs occasioned by that amendment.

(3) The action, arbitration, regulatory inquiry or proceeding is to be continued as if BNZ had originally been made a party to it.

PART 4 — GENERAL

Construction of references

15. Subject to these regulations, if a reference express or implied to BNZ is contained in —

(a) a written law (other than these regulations);

(b) a document, whenever made or executed; or

(c) a register established or kept under a written law,

the reference is, after the commencement time, to be read as a reference to National, unless the context otherwise requires.

Effect of things done under these regulations

16. (1) Nothing effected by these regulations or done or suffered by BNZ or National under these regulations or done to give effect to these regulations —

(a) is to be regarded as placing either of them in breach of contract or confidence or as otherwise making either of them guilty of a civil wrong;

(b) is to be regarded as placing either of them in breach of, or as constituting a default under, any written law or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information;

(c) is to be regarded as fulfilling any condition which allows a person to terminate any agreement or liability; or

(d) releases any surety or other obligee wholly or in part from any liability.

(2) Without limiting subregulation (1) where, but for this subregulation, the advice or consent of any person would be necessary to carry out any action authorized by these regulations, that advice or consent is to be taken to have been given.

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Service of documents

17. Service of a document after the commencement time —

(a) on National is deemed to be service on BNZ in addition to service on National; and

(b) on BNZ is deemed to be service on National in addition to service on BNZ.

Excluded assets

18. (1) A person to whom this subregulation applies is not required to ascertain, or enquire into, whether any property the subject of the dealing or transaction (whether or not that property is land) is an excluded asset, nor is such person to be affected by any notice, express, implied or constructive, that any such property is an excluded asset.

(2) If any dealing or transaction is entered into by National with any person, in relation to or in connection with an excluded asset, it is to be deemed in favour of that person that National has full power and authority to enter into that dealing or transaction as if that asset had vested in National under Part 2.

(3) Nothing in this regulation affects the liability of National to BNZ in respect of anything done, or purporting to be done, by National in relation to or in connection with an excluded asset.

(4) Subregulation (1) applies to —

(a) the Registrar of Titles;

(b) 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, in respect of any dealing or transaction entered into or purporting to be entered into by National or BNZ; and

(c) a person dealing with National or BNZ (in any capacity).

Registered land

19. Where any land registered under the *Transfer of Land Act 1893* of which BNZ is, or is deemed or taken to be, the registered proprietor is by virtue of Part 2 vested in National, despite anything to the contrary in a written law or other law, National is to be taken to be the registered proprietor of the land for the purposes of that Act and the land may be dealt with accordingly.

Bank Mergers (National Australia Bank and Bank of New Zealand) Regulations 1997

Amendment of land records

20. On being requested to do so and following —

(a) delivery of any relevant instrument or document; and

(b) payment of any relevant fee under a written law,

the Registrar of Titles or Registrar of Deeds, as the case requires, is to make any entry in, or any endorsement or notation on, the title, land register or other record in respect of land that is necessary because of the operation of these regulations.

Other property

21. If property (other than property to which regulation 19 or 20 applies) becomes, by virtue of Part 2, the property of National and a person or authority has, under a written law, responsibility for keeping a register in respect of property of that kind, then —

(a) any requirement of that written law relating to the transfer of such property from one person to another is to be taken to have been complied with if there is lodged with that person or authority a certificate signed by the chief executive officer stating that by virtue of Part 2 the undertaking of BNZ has become vested in National; and

(b) that person or authority, on being requested to do so and on delivery of any relevant instrument, is to make any amendments to that register which are necessary to make it accurately reflect the effect of Part 2.

Documentary evidence

22. (1) Any book or document which if these regulations had not been made would have been evidence in respect of any matter for or against BNZ is, subject to these regulations, after the commencement time, to be admissible in evidence in respect of the same matter for or against National.

(2) Without limiting subregulation (1), the bankers' books of BNZ are for the purposes of sections 89 to 96 of the *Evidence Act 1906* deemed to be, and to have been, bankers' books used in the ordinary business of National.

(3) In subregulation (2) —

"bankers' books" has the same meaning as in the *Evidence Act 1906*.

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Certificate as to operation of regulations

23. The chief executive officer may, by signed certificate, certify any matter in relation to the operation of these regulations.

Certificate conclusive

24. (1) For all purposes and in all courts, tribunals and proceedings, a certificate under these regulations is conclusive evidence of the matters certified, except so far as the contrary is established.

(2) A document purporting to be a certificate under these regulations is, unless the contrary is established, to be taken to be such a certificate and to have been properly given.

Application of banking laws

25. Except to the extent that an exemption is directly contemplated by, or is a necessary consequence of, these regulations, nothing in these regulations exempts National or BNZ from the provisions of any written law relating to companies carrying on the business of banking.

By Command of the Governor,

J. PRITCHARD, Clerk of the Executive Council.