

# R&I BANK ACT 1990

(No. 73 of 1990)

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## ARRANGEMENT

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### PART 1—PRELIMINARY

Section

1. Short title
2. Commencement
3. Arrangements for commencement of Act
4. Interpretation
5. Relationship to *Companies (Western Australia) Code*

### PART 2—R&I HOLDINGS

#### *Division 1—Constitution and functions*

6. Body corporate under repealed Act continued
7. Name etc. of body corporate
8. Crown agent
9. Director
10. Functions and powers
11. Power to borrow
12. Further equity etc. in Bank
13. Minister may give directions

#### *Division 2—Financial provisions*

14. Account at Treasury
15. Application of *Financial Administration and Audit Act 1985*
16. Surplus
17. Guarantee

*Division 3—General*

Section

18. Staff etc.
19. Delegation
20. Execution of documents by R&I Holdings
21. Minister to have access to information

PART 3—R&I BANK OF WESTERN AUSTRALIA LTD

22. Status of bank conferred
23. Relationship to Crown
24. Name of Bank
25. Memorandum and articles
26. Share capital of Bank
27. Issue of capital securities
28. Minute as to certain matters
29. Consultation
30. Exercise of certain powers to be subject to consultation
31. Payment of amount in lieu of tax
32. Payment of dividend
33. Guarantee
34. Audit of accounts
35. Information to be laid before Parliament
36. Minor may give effective receipt
37. Saving
38. Deposits by trustees
39. Exemption from State taxation

PART 4—GENERAL

40. Modification of Act—references to Code
41. Confidential information
42. Regulations
43. Repeal
44. Transitional and savings
45. Consequential amendments

SCHEDULE 1

ENTRENCHED PROVISIONS OF ARTICLES

1. Directors and managing director
2. Statement of corporate intent—timetable and procedure
3. Statement of corporate intent—contents
4. Formation and acquisition of subsidiaries

SCHEDULE 2

TRANSITIONAL PROVISIONS

Section

1. Definitions
2. Intention
3. Assets and liabilities
4. Exemption from State taxation
5. Evidence
6. Transfer of certain securities
7. Government agencies
8. Capital stock, debentures etc.
9. Records
10. Existing directors
11. Staff
12. Reference to officers
13. Immunity etc., to continue
14. Former Bank to complete necessary transactions
15. Registration of documents
16. Annual report for period up to appointed day
17. Assistance for carrying out clauses 14 and 16
18. First annual report by R&I Holdings
19. Transitional provision for section 31
20. Transitional provision for section 32
21. Section 218 of Code disappplied
22. Section 206 of the Code—transitional provision
23. Regulations may be made

SCHEDULE 3

CONSEQUENTIAL AMENDMENTS

# R&I BANK ACT

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No. 73 of 1990

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**AN ACT to provide for the business undertaking of The Rural and Industries Bank of Western Australia to be carried on by a company limited by shares to be known as R&I Bank of Western Australia Ltd, and for related purposes.**

[Assented to 20 December 1990.]

The Parliament of Western Australia enacts as follows:

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *R&I Bank Act 1990*.

### Commencement

2. (1) This section and sections 1, 3 and 4 come into operation on the day on which this Act receives the Royal Assent.

- (2) The other provisions of this Act come into operation on such day as is fixed by proclamation, but the proclamation cannot be made until section 3 (4) has been complied with.

**Arrangements for commencement of Act**

3. (1) The Under Treasurer shall as soon as is practicable after this section comes into operation ensure that such steps are taken as are required to complete the arrangements necessary for the commencement of the remaining provisions of this Act.

(2) The arrangements to be so completed are—

(a) that there is in existence a public company limited by shares incorporated under the Code by the name “R&I Bank of Western Australia Ltd”; and

(b) that the memorandum and articles of that company—

(i) comply in all respects with the provisions of this Act and, subject to section 5, the Code;

(ii) contain such provisions as are, and are in a form that is, approved by the Minister; and

(iii) are lodged with the Commission, as defined for the purposes of the Code.

(3) The Under Treasurer may delegate to any person any of the duties required to be performed under subsection (1).

(4) As soon as the Under Treasurer is satisfied that the necessary arrangements have been completed under subsection (1) he or she shall give a certificate to that effect to the Minister and a proclamation may be made under section 2 (2) at any time after the certificate is so given.

**Interpretation**

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

“Account” means account referred to in section 14 (1);

“appointed day” means the day fixed by proclamation under section 2 (2);

“articles” has the meaning assigned to it by the Code;

“Bank” means the company that is constituted as a bank by section 22 (1);

“Code” means the *Companies (Western Australia) Code*;

“document” includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;

“memorandum” has the meaning assigned to it by the Code;

“repealed Act” means the Act repealed by section 43;

“subsidiary” in respect of the Bank means a company that is a subsidiary of the Bank as determined in accordance with the Code;

“R&I Holdings” means the body continued by section 6.

### **Relationship to *Companies (Western Australia) Code***

5. This Act and all things done or omitted under this Act have effect notwithstanding any provision of the *Companies (Western Australia) Code* or any written law that supersedes or amends that Code.

## **PART 2—R&I HOLDINGS**

### *Division 1—Constitution and functions*

#### **Body corporate under repealed Act continued**

6. (1) The body corporate reconstituted by section 4 (1) of the repealed Act is continued as a body corporate under this Act.

(2) The corporate identity of the body corporate referred to in subsection (1) is not affected by the repeal of the repealed Act.

**Name etc. of body corporate**

7. The body corporate continued by section 6—

- (a) has the name “R&I Holdings”;
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name.

**Crown agent**

8. R&I Holdings is an agent of the Crown in right of the State.

**Director**

9. R&I Holdings performs its functions through a director who shall be the person for the time being holding or acting in the office of Under Treasurer.

**Functions and powers**

10. (1) The functions of R&I Holdings are—

- (a) to hold the shares in the Bank issued to it under section 26 (1) or acquired under section 12;
- (b) to borrow moneys and to lend moneys borrowed to the Bank;
- (c) to hold debt paper acquired under section 12; and
- (d) to perform any other function vested in it by this Act or any other written law.

(2) R&I Holdings may do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.

**Power to borrow**

11. (1) R&I Holdings may borrow moneys for the purpose of performing its functions or repaying any existing liability.

(2) Moneys may be borrowed under subsection (1) from the Treasurer or, with the approval of the Treasurer and on such terms and conditions as the Treasurer may specify, from any other person.

(3) Any moneys borrowed under this section may be raised as one loan or as several loans and in such manner as the Treasurer approves, but the amount of the moneys so borrowed shall not in any one financial year exceed in the aggregate such amount as the Treasurer approves.

**Further equity etc. in Bank**

12. (1) R&I Holdings may—

(a) acquire and hold—

(i) further shares in the Bank; and

(ii) debt paper of the Bank;

and

(b) dispose of such debt paper.

(2) A power in subsection (1) may be exercised only with the approval of the Minister and on such terms and conditions as the Minister may specify.

(3) In subsection (1) “debt paper” means—

(a) inscribed stock, bonds, debentures, debentures with coupons annexed, bills of exchange, promissory notes or other bearer securities, or other similar instruments evidencing indebtedness; and

(b) capital securities of the kind described in section 27 (1).



**Minister may give directions**

13. (1) The Minister may give directions in writing to R&I Holdings with respect to the performance of its functions, either generally or in relation to a particular matter, and R&I Holdings shall give effect to any such direction.

(2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of R&I Holdings under section 66 of the *Financial Administration and Audit Act 1985*.

(3) A direction under subsection (1) shall not require R&I Holdings to direct the policy or management of the Bank.

*Division 2—Financial provisions***Account at Treasury**

14. (1) An account shall be established at the Treasury to be called the “R&I Holdings Account”.

(2) There shall be paid into and placed to the credit of the Account—

(a) moneys from time to time appropriated by Parliament;

(b) moneys received—

(i) in respect of any investment of moneys in the Account; or

(ii) under sections 31 and 32;

and

(c) other moneys lawfully received by, made available to, or payable to R&I Holdings.

(3) There shall be paid from the Account the sums required to be paid for the purpose of enabling R&I Holdings to perform its functions and carry out this Act, and for no other purpose.

**Application of *Financial Administration and Audit Act 1985***

15. (1) Subject to subsection (2), the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of R&I Holdings and its operations.

(2) Notwithstanding the *Financial Administration and Audit Act 1985* or the Treasurer's Instructions under that Act—

- (a) the financial year of R&I Holdings shall end on 30 September;
- (b) the annual report of R&I Holdings for any year is not required to contain any financial statements of the Bank, or a report on the Bank's operations, for that year, and for the purposes of that Act or any other written law and the Treasurer's Instructions the Bank (including any subsidiary) is to be treated as not being a body that is subsidiary, related or affiliated to R&I Holdings.

**Surplus**

16. Any surplus in the Account at the end of any financial year shall, except to the extent that moneys are reasonably required to be retained for the purposes of R&I Holdings, be paid to the Consolidated Revenue Fund or the General Loan and Capital Works Fund as the Treasurer may determine.

**Guarantee**

17. (1) The payment of the financial obligations of R&I Holdings is guaranteed by the Treasurer.

(2) Any liability of the Treasurer arising from the guarantee in subsection (1) shall be met out of the Consolidated Revenue Fund which is appropriated to the necessary extent.

*Division 3—General***Staff etc.**

18. (1) R&I Holdings may appoint such officers or engage the services of such persons as may be necessary to enable it to perform its functions.

(2) Subject to any relevant order, award or agreement under the *Industrial Relations Act 1979*, R&I Holdings may determine the remuneration and other terms and conditions of service of its employees.

(3) R&I Holdings may by arrangement made between it and the Treasurer, and on such terms and conditions as may be mutually arranged by it with the Treasurer and, if appropriate, with the Public Service Commissioner, make use, either full time or part time, of the services of any officer, or of any facilities, of the Treasury Department.

**Delegation**

19. R&I Holdings may, by instrument in writing, delegate to any person to whom section 18 applies the performance of such of its functions as are specified in the instrument, but not this power of delegation.

**Execution of documents by R&I Holdings**

20. (1) A document is duly executed by R&I Holdings if—

- (a) the common seal is affixed to it in the presence of its director under section 9, and that person signs the document to attest that the common seal was so affixed; or
- (b) it is signed on behalf of R&I Holdings by the director under section 9 or a person authorized by the director to do so.

(2) A document purporting to be executed in accordance with this section shall be presumed to be duly executed until the contrary is shown.

**Minister to have access to information**

21. (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled to have information in the possession of R&I Holdings and to have and retain copies of documents.

(2) For the purposes of subsection (1) the Minister may—

- (a) request R&I Holdings to furnish information to the Minister;
- (b) request R&I Holdings to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of persons referred to in section 18 to obtain the information and furnish it to the Minister.

(3) R&I Holdings shall comply with a request under subsection (2) and make persons and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section—

“information” means documents or other information relating to the functions of R&I Holdings being information, as so defined, specified, or of a description specified, by the Minister;

“parliamentary purposes” means the purpose of—

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

## PART 3—R&amp;I BANK OF WESTERN AUSTRALIA LTD

**Status of bank conferred**

**22.** (1) The R&I Bank of Western Australia Ltd, referred to in section 3 (2) (a), is constituted by this section as a bank.

(2) In carrying on its banking business the Bank—

(a) is an agency through which the State engages in State banking as referred to in section 51 (xiii) of the Commonwealth Constitution;

(b) shall ensure that the policy of the Bank is directed to the greatest advantage of the people of Western Australia and promotes the balanced economy of the State.

(3) The business of the Bank may be carried on within the State or elsewhere.

(4) Except as expressly provided by or under this Act, nothing in this Act affects the powers of the Bank under the Code or any other written law.

(5) Nothing in subsection (2) shall be read as being a restriction, prohibition or limitation to which section 68 of the Code applies.

**Relationship to Crown**

**23.** Notwithstanding section 22 (2) (a)—

(a) the Bank does not have the status, immunities and privileges of the Crown;

(b) except as provided in this Act, the State is not liable for the Bank's acts, omissions or obligations.

**Name of Bank**

24. (1) The name of the Bank shall not be changed under the provisions of the Code.

(2) Notwithstanding subsection (1), the Bank may use and operate under a trading name being—

- (a) an abbreviation or adaptation of its corporate name; or
- (b) a name approved by the Minister, other than its corporate name or an abbreviation or adaptation of its corporate name.

**Memorandum and articles**

25. (1) The articles of association of the Bank shall at all times contain provisions to the effect of those set out in Schedule 1.

(2) Subject to this Act and the Code, the memorandum and articles of the Bank shall contain such other provisions as are, and be in such form as is, approved by the Minister.

(3) The memorandum and articles of the Bank shall not be amended in a way that is inconsistent with any provision of this Act.

(4) If there is any conflict or inconsistency between this Act and a provision of the memorandum or articles of the Bank, this Act prevails.

(5) Regulations may be made under section 42 amending or replacing Schedule 1 and that Schedule as amended or replaced shall have effect as if enacted in this Act.

(6) Regulations referred to in subsection (5) shall not be made unless the Minister has consulted the board of directors of the Bank on the provision proposed to be made by regulation.

**Share capital of Bank**

26. (1) On the appointed day the Bank is to be taken to have issued and allotted to R&I Holdings fully paid ordinary shares in the capital of the Bank the aggregate nominal value of which is equal to an amount agreed between the Bank and the Minister for the purposes of this subsection.

(2) The nominal value of the shares into which the share capital of the Bank is to be divided shall be as agreed between the Bank and the Minister.

(3) The Bank may, in accordance with the Code and its articles, issue further shares or increase its authorized share capital.

(4) Subject to section 27, shares in the Bank shall not be issued to any person except R&I Holdings.

(5) Subject to section 12 (1) (b), R&I Holdings shall not transfer or otherwise dispose of any of its shares in the Bank or any interest in those shares, whether absolutely or by way of security or in any other manner.

(6) Sections 82 and 364 (1) (d) of the Code do not apply to the Bank.

### **Issue of capital securities**

**27.** (1) This section applies where the Bank exercises its powers to issue or make capital securities by entering into an arrangement that may result in an issue of shares by the Bank.

(2) Where this section applies, the Bank shall not issue the shares to a person other than R&I Holdings unless the shares confer either—

- (a) no rights in relation to the direction, management or control of the Bank; or
- (b) a right to vote that is exercisable only in one or more of the following circumstances—
  - (i) during a period during which a dividend (or part of a dividend) in respect of the share is in arrears;
  - (ii) upon a proposal to reduce the share capital of the Bank;
  - (iii) upon a proposal that affects rights attached to the share;
  - (iv) upon a proposal to wind up the Bank;

- (v) upon a proposal for the disposal of the whole of the business undertaking of the Bank;
- (vi) during the winding up of the Bank.

### **Minute as to certain matters**

**28.** (1) Where a minute is signed by R&I Holdings stating that any act, matter or thing, or any ordinary or special resolution, allowed or required by the Code or by the memorandum or articles of the Bank to be made, performed, or passed by or at a general meeting of the Bank has been made, performed, or passed, that act, matter, thing or resolution shall, for all purposes, be taken to have been duly made, performed or passed by or at a general meeting of the Bank.

(2) A minute shall not be signed for the purposes of subsection (1) unless it has been approved by the Minister.

(3) R&I Holdings is not competent under subsection (1) to give directions as to the policy or management of the Bank.

### **Consultation**

**29.** (1) The board of directors of the Bank and the Minister shall, at the request of either, consult together, either personally or through appropriate representatives, in relation to any aspect of the policies or administration of the Bank.

(2) The board of directors of the Bank shall consider any proposals made by the Minister in relation to the Bank's affairs and shall, if so requested, report to the Minister on any such proposals.

(3) A record shall be made in the minutes of any meeting of the board of directors of the Bank of—

- (a) any proposal referred to in subsection (2); and
- (b) any consideration given by the Board to that proposal.

### **Exercise of certain powers to be subject to consultation**

**30.** (1) The board of directors of the Bank shall consult the Minister before entering upon a course of action that in the opinion of the board amounts to a major initiative.



(2) Without limiting the generality of subsection (1), the Bank, or any subsidiary of the Bank, shall not enter into any contract, arrangement or other transaction for which the amount or value of the consideration or the amount to be paid or received by the Bank or the subsidiary exceeds 1%, or such other percentage as is prescribed, of the "risk weighted assets of the Bank" (as that expression is defined by the regulations), unless the board of directors of the Bank has first informed the Minister of the proposal and held such consultations with the Minister as the Minister may require.

(3) Subsection (2) does not apply to—

- (a) the taking or giving of any security by the Bank, or a subsidiary of the Bank, for money lent or borrowed in the ordinary course of business or the exercise of any remedy in respect of any such security; or
- (b) the borrowing or lending of any money by the Bank, or a subsidiary of the Bank, in the ordinary course of business.

### **Payment of amount in lieu of tax**

31. (1) The Bank shall pay to R&I Holdings in respect of a financial year a sum equal to the amount of any tax for which the Bank would have been liable under the law of the Commonwealth in respect of that financial year if the Bank were liable to that tax under that law.

(2) The amount payable under subsection (1) shall be determined by an assessor appointed by the Bank with the approval of the Treasurer.

(3) An assessor for the purposes of this section shall be a person who is a registered company auditor for the purposes of the Code and shall not be the Auditor General or a director or employee of the Bank.

(4) The amount payable under subsection (1) shall be paid at such time or times—

- (a) as may be agreed between the Bank and the Treasurer; or

- (b) failing agreement, as the assessor determines to be the time or times at which it would be payable under the law of the Commonwealth.

(5) If in any year after the financial statements of the Bank have been audited an adjustment is necessary to the amount determined under subsection (2) in order that proper effect may be given to subsection (1), the assessor shall make a further determination of the revised amount required to be paid and any adjustment shall be made as soon as practicable by an appropriate payment to the Bank or to R&I Holdings, as the case may require.

(6) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of any payment to be made to the Bank by way of adjustment under subsection (5).

### **Payment of dividend**

**32.** (1) A dividend under this section shall be—

- (a) calculated with respect to the net profits of the Bank for a financial year after first taking into account the amount payable to the Treasurer under section 31; and
- (b) paid to R&I Holdings, in accordance with subsection (4).

(2) The board of directors of the Bank shall, as soon as practicable after the end of each financial year of the Bank, make a recommendation to the Treasurer as to the amount of the dividend (if any) that the board recommends as appropriate for that financial year.

(3) The Treasurer may accept a recommendation under subsection (2) or, after consultation with the board of directors of the Bank, determine that some other amount is to be paid.

(4) The Bank shall pay the amount of a dividend payable under this section as soon as practicable after the determination of the Treasurer and shall use its best endeavours to ensure that the amount is paid within 6 months after the end of the financial year to which the dividend relates.

**Guarantee**

**33.** (1) The payment of the financial obligations of the Bank is guaranteed by the Treasurer.

(2) The payment of money due—

(a) by the Bank under clause 8 of Schedule 2; or

(b) by a subsidiary of the Bank,

is not guaranteed under subsection (1).

(3) Any liability of the Treasurer arising from the guarantee in subsection (1) shall be met out of the Consolidated Revenue Fund which is appropriated to the necessary extent.

(4) The Treasurer may, after consultation with the board of directors of the Bank, fix charges to be paid by the Bank to the Treasurer for the benefit of the Consolidated Revenue Fund in respect of the guarantee under this section.

(5) Payments by the Bank to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

**Audit of accounts**

**34.** (1) Notwithstanding sections 280 and 281 of the Code, the Auditor General shall audit the accounts of the Bank and shall do so in accordance with the Code.

(2) For the purposes of subsection (1) the Bank is to be taken to be a statutory authority to which Division 2 of Part III of the *Financial Administration and Audit Act 1985* applies.

(3) A report of the Auditor General under section 95 of the *Financial Administration and Audit Act 1985* may include a report relating to matters arising from the performance of his functions under this section and the Code.

### Information to be laid before Parliament

**35.** (1) The Minister shall cause a copy of each of the following documents to be laid before each House of Parliament within the time specified for that document—

- (a) a copy of the memorandum and articles of the Bank, within 21 days after the appointed day;
- (b) a copy of any amendment to the memorandum or articles of the Bank within 21 days after the amendment is made; and
- (c) a copy of the annual report, audited financial statements, and the Auditor General's report on those statements, delivered to R&I Holdings in accordance with Part VI of the Code, within 21 days after the day on which they are respectively so delivered.

(2) If at the commencement of a period referred to in subsection (1) in respect of a document a House of Parliament is not sitting and the Minister is of the opinion that that House will not sit during that period, the Minister shall transmit a copy of the document to the Clerk of that House, and the copy of the document so transmitted shall be—

- (a) taken to have been laid before that House;
- (b) printed by authority of the Clerk of that House; and
- (c) taken to be a document published by order or under the authority of that House.

(3) The laying of a copy of a document deemed to have occurred under subsection (2) (a) shall be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

**Minor may give effective receipt**

**36.** A receipt given by a minor for the payment of money standing to the credit of an account of the minor is a complete discharge to the Bank for the payment of that money.

**Saving**

**37.** A failure by the Bank to comply with section 22 (2) (b) or 30 or clause 2, 3 or 4 of Schedule 1 does not affect the validity or enforceability of any contract, arrangement or other transaction, and a person dealing with the Bank on any matter is not bound to enquire whether any such provision has been complied with in respect of that matter.

**Deposits by trustees**

**38.** A trustee, executor or administrator may invest or deposit any trust money on deposit or current account in the Bank.

**Exemption from State taxation**

**39.** (1) Tax under a law of the State is not payable in relation to—

- (a) an exempt matter; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

(2) The Treasurer or a person authorized by the Treasurer may on request by the Bank, by written instrument, certify that—

- (a) a specified matter or thing is an exempt matter; or
- (b) a specified thing was done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified matter.

(3) For all purposes and in all proceedings, a certificate under this section is conclusive evidence of the matters certified, except so far as the contrary is shown.

(4) In this section—

“exempt matter” means—

- (a) the issue or allotment of any shares at any time in the Bank to R&I Holdings or the repurchase of any of those shares;
- (b) the issue of any capital securities under section 27 at any time by the Bank to R&I Holdings or the repurchase or redemption by any means of those securities by the Bank; and
- (c) the giving effect by any means to any of the above;

“tax” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge.

#### PART 4—GENERAL

##### **Modification of Act—references to Code**

40. If the Code is superseded by another law that contains provisions corresponding to the provisions of the Code, regulations may be made under section 42 amending this Act—

- (a) by deleting a reference to the Code or a provision or part of the Code and substituting a reference to the other law or a provision or part of the other law; or
- (b) by making any other amendment that is merely consequential on the coming into force of the other law and does not change the meaning of any provision of this Act.

**Confidential information**

41. (1) Nothing in this Act entitles the Minister or R&I Holdings to have information in the possession of the Bank—

(a) concerning the affairs of the Bank or a subsidiary of the Bank in a form that—

(i) discloses the identity and affairs of any person who is or has been a customer of the Bank or a subsidiary of the Bank; or

(ii) might enable the identity and affairs of any such person to be ascertained;

or

(b) that has been obtained from a person by the Bank or a subsidiary of the Bank on a confidential basis.

(2) Subsection (1) does not apply where disclosure of the information—

(a) is required by some other written law; or

(b) is authorized by the customer or the person to whom the duty of confidentiality is owed.

(3) In this section—

“Bank” includes the Bank as constituted under the repealed Act or the Act repealed by that Act;

“customer” includes former customers of the Bank or a subsidiary of the Bank.

**Regulations**

42. The Governor may make regulations prescribing all matters or things that are required or are necessary or convenient to be prescribed for giving effect to this Act.

**Repeal**

43. *The Rural and Industries Bank of Western Australia Act 1987* is repealed.

**Transitional and savings**

44. Schedule 2 has effect.

**Consequential amendments**

45. (1) Schedule 3 has effect.

(2) Regulations made under section 42 may amend a provision of a written law that contains a reference to the former Bank (as defined in Schedule 2), a predecessor of that body, the repealed Act or the Act repealed by that Act in a manner that is merely consequential on the coming into force of this Act and does not change the meaning of that other law.

**SCHEDULE 1**

(Section 25)

**ENTRENCHED PROVISIONS OF ARTICLES****Directors and managing director**

1. (1) The board of directors of the Bank shall comprise not less than 5 nor more than 9 directors, including the managing director.

(2) There shall be a managing director of the Bank who—

(a) shall by virtue of his office be a director of the Bank; and

(b) subject to the board of directors and to subclause (3), shall be responsible for the management of the Bank.

(3) In the performance of their respective functions the directors and the managing director are subject to the provisions of this Act, the Code (except as excluded by this Act) and the memorandum and articles of the Bank.



(4) The powers to appoint and to remove directors (including a chairperson and deputy chairperson of the board of directors) and the managing director of the Bank are vested in the Minister, but any such power is exercisable only—

- (a) after obtaining a recommendation from and consulting with the board of directors; and
- (b) subject to any provision in the articles of the Bank.

(5) The terms and conditions of appointment shall be fixed—

- (a) in the case of the managing director, by the board of directors; and
- (b) in the case of the other directors, by the Minister after consultation with the board of directors.

(6) This clause has effect subject to clause 10 of Schedule 2.

**Statement of corporate intent—  
timetable and procedure**

2. (1) The board of directors shall prepare and submit to the Minister a written statement of corporate intent not later than one month after the commencement of each financial year of the Bank.

(2) The board shall consider any comments on the statement of corporate intent that are made to it by the Minister within 2 months after the commencement of the financial year of the Bank.

(3) The board shall—

- (a) consult with the Minister following communication to it of the comments;
- (b) make such changes to the statement as are agreed between the Minister and the board; and
- (c) deliver the completed written statement to the Minister within 3 months after the commencement of the financial year.

(4) The statement may be modified at any time by the board with the agreement of the Minister.

(5) The Minister may not direct the board to include any matter in, or omit any matter from, a statement of corporate intent.

(6) At any particular time, the statement of corporate intent for the Bank is the completed statement with any modifications made in accordance with this clause.

**Statement of corporate intent—contents**

3. Each statement of corporate intent is required to specify for the Bank and its subsidiaries, in respect of the financial year to which it relates and each of the 2 following financial years, the following information—

- (a) the objectives of the Bank and of its subsidiaries;
- (b) the nature and scope of the activities to be undertaken;
- (c) the performance targets and other measures by which the performance of the Bank and of its subsidiaries may be judged in relation to their stated objectives;
- (d) such other matters as may from time to time be agreed on by the Minister and the board of directors.

**Formation and acquisition of subsidiaries**

4. The Bank or any subsidiary of the Bank shall not form, participate in the formation of or acquire any subsidiary without giving prior written notice to the Minister.

**SCHEDULE 2**

(Section 44)

**TRANSITIONAL PROVISIONS****Definitions**

1. In this Schedule, unless the contrary intention appears—

“assets” 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;

“business undertaking” means all assets, rights and liabilities of the former Bank and includes any security existing on the appointed day in favour of the former Bank;

“former Bank” means the Bank as defined in section 3 of the repealed Act;

“liability” means any liability, duty or obligation whether actual, contingent or prospective;

“right” means any right, power, privilege or immunity whether actual, contingent or prospective;

“security” means a mortgage, submortgage or charge (whether legal or equitable), bond, stock, note, debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, lien, pledge or other security for the payment of money or for the discharge of any other obligation or liability, and in any case whether upon demand or otherwise, whether present or future and whether actual or contingent, and includes an acknowledgement of debt (whether or not otherwise secured) and an agreement or undertaking to give or execute any of the foregoing whether upon demand or otherwise.

### Intention

2. (1) The intention of the provisions in this Schedule is that the Bank shall in all respects stand in the place of the former Bank.

(2) With respect to the repeal effected by section 43, this Act is supplementary to, and does not displace the operation of, the *Interpretation Act 1984*.

### Assets and liabilities

3. (1) On the appointed day—

- (a) the assets of the former Bank comprised in its business undertaking vest in the Bank by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of the former Bank comprised in its business undertaking become by virtue of this clause the rights and liabilities of the Bank;
- (c) all proceedings relating to the business undertaking commenced before the appointed day by or against the former Bank or a predecessor of the former Bank and pending immediately before the appointed day are to be taken to be proceedings pending by or against the Bank;
- (d) all proceedings relating to the business undertaking that might have been commenced before the appointed day by or against the former Bank may be taken by or against the Bank;
- (e) any act, matter or thing done or omitted to be done in relation to the business undertaking before the appointed day by, to or in respect of the former Bank (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Bank;

- (f) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the former Bank or a predecessor of the former Bank is to be construed as if it had been amended to be, or include, a reference to the Bank, except where the context otherwise requires.
- (2) The operation of this clause is not to be regarded—
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
  - (d) as releasing, or allowing the release of, any surety.
- (3) No attornment to the Bank by a lessee from the former Bank is required.

#### **Exemption from State taxation**

4. For the purposes of the establishment of the Bank and the transition from the former Bank to the Bank section 39 applies as if “exempt matter” were defined in that section as—

- (a) the formation of, or the acquisition of shares in, a company for the purposes of section 3;
- (b) the registration of such a company;
- (c) the passing of all or any part of the business undertaking from the former Bank to the Bank; and
- (d) the giving effect by any means to any of the above.

#### **Evidence**

5. (1) Documentary or other evidence which would have been admissible for or against the interests of the former Bank if this Act had not been enacted shall be admissible for or against the interests of the Bank.

(2) Sections 89 to 96 (inclusive) of the *Evidence Act 1906* continue to apply with respect to the banker's books of the former Bank and to entries made in those banker's books before the appointed day.

(3) In subclause (2) “banker's books” has the same meaning as in the *Evidence Act 1906*.

**Transfer of certain securities**

6. (1) Where securities to which this clause applies are by virtue of this Schedule vested in the Bank a certificate signed by the managing director of the Bank, or by an officer acting under delegation from him, stating that the securities have so vested shall, notwithstanding any other Act or law or the provisions of any instrument, be deemed to be a sufficient duly stamped instrument of transfer of those securities.

(2) This clause applies to and in respect of securities, as defined in section 4 (1) of the *Securities Industry (Western Australia) Code*, that, when vested in the Bank, will be held by way of security.

**Government agencies**

7. (1) Any agency under Division 2 of Part 3 of the repealed Act held by the former Bank immediately before the appointed day is to continue as an agency of the Bank.

(2) Until such an agency expires or otherwise ceases to be operative or until an agreement or arrangement is made by the Bank in substitution for such an agency, the agency is to continue to be governed by the provisions of the repealed Act that applied to it immediately before the appointed day.

(3) Nothing in this clause affects any power of the Bank to enter into any agency agreement after the appointed day.

**Capital stock, debentures etc.**

8. (1) Without limiting the generality of clause 3, on the appointed day the liability of the former Bank in respect of—

(a) capital stock issued under section 29A of the *Rural and Industries Bank Act 1944*; and

(b) debentures and inscribed stock issued under section 30 of that Act,

and not redeemed before that day becomes, by virtue of this clause, the liability of the Bank and may be enforced against the Bank as if the debentures or stock had been created and issued by it.

(2) The provisions of the repealed Acts relating to—

(a) the administration of the capital stock, debentures and inscribed stock referred to in subclause (1); and

(b) the determination of rights and obligations in respect of the same,

that applied to such capital stock, debentures and inscribed stock immediately before the appointed day are to be taken to be in force, with all necessary changes, so far as is necessary for the purposes referred to in paragraphs (a) and (b), but for no other purpose.

(3) In subclause (2) "the repealed Acts" means—

- (a) the repealed Act and the Act repealed by section 36 of that Act;
- (b) the *Rural and Industries Bank of Western Australia Debentures and Inscribed Stock Regulations 1964*;
- (c) the *Rural and Industries Bank (Capital Stock) Regulations 1986*.

(4) The Governor may, by further regulations, amend or repeal the regulations referred to in subclause (3).

### Records

9. The Bank becomes, on the appointed day, the owner of all registers, documents, books and other records (however compiled, recorded or stored) relating to the business undertaking, and of any tape, disc or other device or medium relating to such records.

### Existing directors

10. (1) The persons holding office as directors of the company referred to in section 3 (2) (a) immediately before the appointed day cease to hold office on that day.

(2) A person holding office as—

- (a) a director of the Board;
- (b) chairman or deputy chairman of the Board; or
- (c) managing director and *ex officio* director of the former Bank,

under the repealed Act shall on and after the appointed day respectively hold the office of—

- (d) director of the Bank;
- (e) chairman or deputy chairman of directors of the Bank; and
- (f) managing director and director of the Bank.

(3) A person referred to in subclause (2) shall, subject to the Code and the articles of the Bank, hold office for the period for which he or she would have held office under the repealed Act and is entitled to the benefit of the same terms and conditions as applied to his or her appointment under that Act.

**Staff**

11. (1) On and after the appointed day—

- (a) all persons who were employed or engaged immediately before that day under section 10 of the repealed Act shall continue to be employed or engaged by the Bank;
- (b) the terms and conditions, including the salary payable, on which such persons were employed or engaged immediately before that day continue; and
- (c) there is no break or interruption in the employment or engagement of such persons by reason of the enactment of this Act.

(2) Any employment or engagement referred to in subclause (1) is capable of termination, and the terms and conditions are capable of variation, after the appointed day in the same manner and to the same extent as before that day.

(3) Nothing in this Act affects—

- (a) any rights or liabilities of any person under any provident, benefit, superannuation or retirement fund or scheme relating to any person referred to in subclause (1) or any former employee of the former bank; or
- (b) any other employee entitlement existing immediately before the appointed day.

**Reference to officers**

12. A reference in any other Act, in any instrument made under any Act or in any instrument or document of any kind to the holder for the time being of a particular office of the former Bank is to be read, if there is no equivalent office of the Bank, as a reference to the managing director of the Bank.

**Immunity etc., to continue**

13. Notwithstanding the repeal of the repealed Act, where the former Bank had the benefit of any immunity or privilege in respect of an act, matter or thing done or omitted before the appointed day, that immunity or privilege continues in that respect for the benefit of the Bank.

**Former Bank to complete necessary transactions**

14. (1) Notwithstanding the repeal of the repealed Act, the former Bank and the Board, within the meaning of that Act—

- (a) continue as if there had been no such repeal, for the purpose of performing the function described in subclause (2); and
- (b) have all such powers as are necessary or convenient for that purpose.

(2) Where any asset, right or liability to which this Schedule applies cannot be properly vested in or succeeded to by the Bank by the operation of this Act (whether because the matter is governed otherwise than by the law of the State, or for any other reason)—

- (a) the former Bank shall be taken to continue to hold or be liable for that asset, right or liability until the same is effectively vested in or succeeded to by the Bank; and
- (b) the former Bank and its Board shall take all practicable steps for the purpose of securing that such asset, right or liability is effectively vested in or succeeded to by the Bank.

(3) The performance of the functions of the former Bank and its Board pursuant to this clause shall not constitute or continue the former Bank as a bank or be construed as the conduct of State banking or banking business by the former Bank or its Board.

**Registration of documents**

15. (1) The Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Act 1933*, the *Mining Act 1978* and the *Mining Development Act 1902*, the Commissioner for Corporate Affairs, and any other person authorized by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, shall take cognizance of the provisions of this Act and are empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Act.

(2) Without limiting subclause (1) a statement in an instrument executed by the Bank that any estate or interest in land or other property has become vested in the Bank under clause 3 is evidence of that fact.

**Annual report for period up to appointed day**

16. (1) The Board of directors under the repealed Act shall report in respect of the former Bank as required by section 66 of the *Financial Administration and Audit Act 1985*, as read with section 27 of the repealed Act, for the period from 1 April 1990 to the appointed day.



(2) Notwithstanding the repeal of the repealed Act, the former Bank and the Board of directors under that Act continue as if there had been no such repeal for the purposes of subclause (1).

#### **Assistance for carrying out clauses 14 and 16**

17. The Bank shall provide such technical, clerical and other assistance as is reasonably required to enable clauses 14 and 16 to be complied with.

#### **First annual report by R&I Holdings**

18. For the purposes of Division 14 of Part II of the *Financial Administration and Audit Act 1985*, as it applies to R&I Holdings under section 15, the period from the appointed day to the succeeding 30 September is to be taken to be a full financial year.

#### **Transitional provision for section 31**

19. For the purpose of the transition from section 28 of the repealed Act to section 31 of this Act—

(a) the Bank is entitled—

(i) to the business undertaking of the former Bank; and

(ii) to carry forward any benefits, entitlements or losses of the former Bank,

on the basis that it is in all respects the same entity carrying on the same business undertaking;

(b) section 28 shall apply, with all necessary changes, to the period from 1 April 1990 to the appointed day as if it were a full financial year and shall continue in force after the appointed day for the purpose of giving effect to this clause;

(c) the board of directors of the Bank shall perform the functions vested in the Board under the repealed Act by section 28 (2) of that Act;

(d) the sum to be paid, if any, shall be paid by the Bank as defined in this Act not later than 3 months after the appointed day; and

(e) section 31 of this Act shall apply to the period from the appointed day to the succeeding 30 September as if it were a full financial year.

**Transitional provision for section 32**

20. For the purpose of the transition from section 29 of the repealed Act to section 32 of this Act—

- (a) section 29 shall apply to the period from 1 April 1990 to the appointed day as if it were a full financial year and shall continue in force after the appointed day for the purpose of giving effect to this clause;
- (b) the board of directors of the Bank shall perform the function vested in the Board under the repealed Act by section 29 (3) of that Act;
- (c) the amount of the dividend shall be paid by the Bank as defined in this Act; and
- (d) section 32 of this Act shall apply to the period from the appointed day to the succeeding 30 September as if it were a full financial year.

**Section 218 of Code disappplied**

21. (1) The Bank, or any officer or other person acting on behalf of the Bank, shall not be taken to be in breach of section 218 of the Code by reason of the use of any instrument or document of any kind or any sign or other form of publication bearing the name of the former Bank.

(2) Subclause (1) applies for the period of 30 months commencing on the appointed day.

**Section 206 of the Code—transitional provision**

22. The Bank shall be taken to have complied with section 206 of the Code in respect of all charges of the former Bank or any predecessor of the former Bank of which the Bank becomes the holder under this Act.

**Regulations may be made**

23. (1) If there is no sufficient provision in this Schedule for any matter or thing necessary or convenient to give effect to the intention described in clause 2, regulations made under section 42 may make that provision.

(2) Any such regulations may be made so as to have effect from the appointed day.

(3) To the extent that a provision of any such regulations has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State, R&I Holdings, the Bank or any authority of the State), the rights of that person existing before the day of its publication; or
- (b) to impose liabilities on any person (other than the State, R&I Holdings, the Bank or any authority of the State) in respect of anything done or omitted to be done before the day of publication.

### SCHEDULE 3

(Section 45)

#### CONSEQUENTIAL AMENDMENTS

<i>Short title of Act</i>	<i>Amendment</i>
1. <i>Constitution Acts Amendment Act 1899</i>	<p>In Part 3 of Schedule V, delete the item relating to the board of directors of The Rural and Industries Bank of Western Australia and substitute the following—</p> <p>“ The board of directors of R&amp;I Bank of Western Australia Ltd referred to in section 22 of the <i>R&amp;I Bank Act 1990</i>. ”.</p>
2. <i>Stamp Act 1921</i>	<p>(1) In section 112I (1), in the definition of “bank”, delete paragraph (a) and substitute the following—</p> <p>“ (a) R&amp;I Bank of Western Australia Ltd referred to in section 22 of the <i>R&amp;I Bank Act 1990</i>; ”.</p> <p>(2) In the Third Schedule, in item 1 (4) (b) delete “Savings Bank Division of the Rural Department of The Rural and Industries Bank of Western Australia constituted under the <i>Rural and Industries Bank Act 1944</i>” and substitute the following—</p> <p>“ savings bank of the R&amp;I Bank of Western Australia Ltd ”.</p>

*Short title of Act**Amendment*

3. *Local Government Act 1960* (1) In section 6 (1) in the definition of "owner" delete paragraph (h) and substitute the following—

" (h) does not include the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* as mortgagee in possession or otherwise; "

- (2) In section 560 (1) delete "The Commissioners of the Rural and Industries Bank of Western Australia" and substitute the following—

" the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990*".

- (3) In section 569 (7) delete paragraph (d) and substitute the following—

" (d) the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* "

- (4) In section 578 (5) (d) delete "The Commissioners of the Rural and Industries Bank of Western Australia" and substitute the following—

" the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* "

- (5) In section 581 delete "The Commissioners of the Rural and Industries Bank of Western Australia" and substitute the following—

" the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* "

*Short title of Act**Amendment*

- (6) In section 586 delete "The Commissioners of the Rural and Industries Bank of Western Australia" and substitute the following—

" the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* ".

- (7) In section 589—

- (a) in the passage beginning "secondly", in paragraph (b), delete "Rural and Industries Bank of Western Australia" and substitute the following—

" R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* ";

and

- (b) delete the passage beginning "thirdly" and ending with "1944;" and substitute the following—

" thirdly—in payment of money due under mortgage of the land to the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990*; ".

- (8) In section 593—

- (a) in subsection (1) (b) delete "The Commissioners of the Rural and Industries Bank of Western Australia" and substitute the following—

" the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* "; and

*Short title of Act**Amendment*

- (b) in subsection (3) (b) delete "The Commissioners of the Rural and Industries Bank of Western Australia" and substitute the following—
- " the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* ".
- (9) In section 594 (6) delete "The Commissioners of the Rural and Industries Bank of Western Australia" and substitute the following—
- " the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* ".
- (10) In section 596 (2) delete "The Commissioners of the Rural and Industries Bank of Western Australia" and substitute the following—
- " the R&I Bank of Western Australia Ltd referred to in section 22 of the *R&I Bank Act 1990* ".
4. *Legal Contribution Trust Act 1967* In section 13 (1) delete paragraph (b) and substitute the following—
- " (b) on loan to the Treasurer at a rate of interest that is agreed with the Treasurer. ".
5. *Parliamentary Commissioner Act 1971* In the Schedule, insert in the appropriate alphabetical position the following—
- " R&I Holdings being the body continued by section 6 of the *R&I Bank Act 1990*. ".
6. *Auction Sales Act 1973* In section 5 (1), delete paragraph (b).

<i>Short title of Act</i>	<i>Amendment</i>
7. <i>Real Estate and Business Agents Act 1978</i>	<p>(1) In section 108 (1) (a) delete subparagraph (ii) and substitute the following—</p> <p style="padding-left: 40px;">“ (ii) on loan to the Treasurer at a rate of interest that is agreed with the Treasurer; or ”.</p> <p>(2) In section 129 (1) delete paragraph (b) and substitute the following—</p> <p style="padding-left: 40px;">“ (b) on loan to the Treasurer at a rate of interest that is agreed with the Treasurer; or ”.</p> <p>(3) In section 131C (1) delete paragraph (b) and substitute the following—</p> <p style="padding-left: 40px;">“ (b) on loan to the Treasurer at a rate of interest that is agreed with the Treasurer; or ”.</p>
8. <i>Industrial Relations Act 1979</i>	In section 7 (1), in the definition of “public authority” delete “The Rural and Industries Bank of Western Australia constituted by <i>The Rural and Industries Bank of Western Australia Act 1987</i> or”.
9. <i>Settlement Agents Act 1981</i>	<p>(1) In section 89 (1) (a) delete subparagraph (ii) and substitute the following—</p> <p style="padding-left: 40px;">“ (ii) on loan to the Treasurer at a rate of interest that is agreed with the Treasurer; or ”.</p> <p>(2) In section 107 (1) delete paragraph (b) and substitute the following—</p> <p style="padding-left: 40px;">“ (b) on loan to the Treasurer at a rate of interest that is agreed with the Treasurer; or ”.</p>
10. <i>Financial Administration and Audit Act 1985</i>	<p>(1) In section 3 (1), in the definition of “bank”, delete paragraph (a) (ii) and substitute the following—</p> <p style="padding-left: 40px;">“ (ii) R&amp;I Bank of Western Australia Ltd; and ”.</p>

*Short title of Act**Amendment*

(2) In Schedule 1, delete "The Rural and Industries Bank of Western Australia" and substitute the following—

" R&I Holdings ".

11. *Unclaimed Money Act*  
1990

In section 4 (4), delete paragraph (b).

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