

Western Australia

**The Commercial Banking Company of
Sydney Limited (Merger) Act 1982**

As at 28 Jun 2010

Version 01-b0-01

Extract from www.slp.wa.gov.au, see that website for further information

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Western Australia

The Commercial Banking Company of Sydney Limited (Merger) Act 1982

An Act to supplement *The Commercial Banking Company of Sydney Limited (Merger) Act 1982* of the State of New South Wales which provides for the transfer to The National Bank of Australasia Limited of the undertaking of The Commercial Banking Company of Sydney Limited, and for the transfer to The National Bank Savings Bank Limited of the undertaking of C.B.C. Savings Bank Limited, and for connected purposes.

Whereas The Commercial Banking Company of Sydney Limited became a wholly owned subsidiary of The National Bank of Australasia Limited in pursuance of schemes of arrangement under the provisions of the *Companies Act 1961* of the State of New South Wales having effect from 1 October 1981:

And whereas C.B.C. Savings Bank Limited is a wholly owned subsidiary of The Commercial Banking Company of Sydney Limited, and The National Bank Savings Bank Limited is a wholly owned subsidiary of The National Bank of Australasia Limited:

And whereas it is expedient in the interests of banking efficiency that the banking business conducted by The Commercial Banking Company of Sydney Limited should be transferred to The National Bank of Australasia Limited, and the banking business conducted by C.B.C. Savings Bank Limited should be transferred to The National Bank Savings Bank Limited:

And whereas it is expedient that the transfers be effected by Act of the Parliament:

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And whereas by *The Commercial Banking Company of Sydney Limited (Merger) Act 1982* of the State of New South Wales provision is made for the vesting in The National Bank of Australasia Limited of the undertaking of The Commercial Banking Company of Sydney Limited, and for the vesting in The National Bank Savings Bank Limited of the undertaking of C.B.C. Savings Bank Limited, and for the vesting in National Nominees Limited of all property held by Commercial Nominees Pty. Limited as trustee:

And whereas to vest the undertakings of The Commercial Banking Company of Sydney Limited and of C.B.C. Savings Bank Limited carried on in Western Australia in The National Bank of Australasia Limited and The National Bank Savings Bank Limited respectively, and to vest the property held by Commercial Nominees Pty. Limited as trustee in Western Australia in National Nominees Limited, it is expedient to enact the provisions set out herein:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

1. Short title

This Act may be cited as *The Commercial Banking Company of Sydney Limited (Merger) Act 1982*¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

3. Terms used in this Act

In this Act, unless the contrary intention appears —

the appointed day means the day of coming into operation of this Act;

CBC means The Commercial Banking Company of Sydney Limited;

CBC Savings Bank means C.B.C. Savings Bank Limited;

corporation includes any body, corporate or un-incorporate;

excluded assets means —

- (a) documents required by law to be kept by CBC or CBC Savings Bank;
- (b) prescribed securities held, immediately before the appointed day, by or on behalf of CBC or CBC Savings Bank otherwise than by way of security; and
- (c) land held, immediately before the appointed day, by or on behalf of CBC or CBC Savings Bank otherwise than by way of security;

instrument means an instrument (other than this Act) that creates, evidences, modifies or extinguishes rights or liabilities, or would do so if it or a copy thereof were lodged, filed or registered under any Act or other law, and includes any judgment, order or process of a court;

land includes any estate or interest in land, or an interest in respect of land;

legal proceedings includes an arbitration;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

prescribed securities means securities within the meaning of the *Securities Industry (Western Australia) Code*;

property means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal, and without limiting the generality of the foregoing includes choses in action, goodwill, rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

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rights means all rights, powers, privileges and immunities whether actual, contingent or prospective;

security means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, lien, pledge or other security for the payment of money or for the discharge of any other liability, and includes an agreement or undertaking to give or execute any of the foregoing whether upon demand or otherwise;

the continuing bank means The National Bank of Australasia Limited;

the continuing savings bank means The National Bank Savings Bank Limited;

transferred employee means an employee of CBC who becomes an employee of the continuing bank in pursuance of this Act;

undertaking, in relation to CBC or CBC Savings Bank, means —

- (a) all property of the relevant bank (apart from excluded assets); and
- (b) all rights and liabilities of the relevant bank (apart from rights and liabilities relating to excluded assets).

4. Crown to be bound

This Act binds the Crown.

5. Vesting of undertakings of merging bank and savings bank

- (1) On the appointed day —
 - (a) the undertaking of CBC is vested in the continuing bank; and
 - (b) the undertaking of CBC Savings Bank is vested in the continuing savings bank.
- (2) On and after the appointed day —
 - (a) a reference to CBC in any instrument made, passed or executed before that day shall (except to the extent, if

- any, that the instrument relates to an excluded asset, and unless the context otherwise requires) be read and construed as a reference to the continuing bank;
- (b) a reference to CBC Savings Bank in any instrument made, passed or executed before that day shall (except to the extent, if any, that the instrument relates to an excluded asset, and unless the context otherwise requires) be read and construed as a reference to the continuing savings bank; and
 - (c) a reference to the holder for the time being of a particular office (other than the office of a director, secretary or auditor) within CBC or CBC Savings Bank in any instrument made or executed before that day shall be read and construed as a reference to a person for the time being holding office as Managing Director of the continuing bank or such other officer of the continuing bank or the continuing savings bank as is designated from time to time by a Managing Director of the continuing bank or by any other officer acting under delegation from him.
- (3) On and after the appointed day —
- (a) any place of business of CBC, wherever located, shall be deemed to be a place of business of the continuing bank; and
 - (b) any place of business of CBC Savings Bank, wherever located, shall be deemed to be a place of business of the continuing savings bank.
- (4) Without prejudice to the generality of subsection (1), but notwithstanding anything to the contrary in any other Act or law —
- (a) where any registered estate or interest in land (being land under the provisions of the *Transfer of Land Act 1893*) is by virtue of this Act vested in the continuing bank or in the continuing savings bank —

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- (i) the continuing bank shall be deemed to be the registered proprietor of any such estate or interest of which CBC is the registered proprietor; and
 - (ii) the continuing savings bank shall be deemed to be the registered proprietor of any such estate or interest of which CBC Savings Bank is the registered proprietor,
and the estate or interest may be dealt with accordingly;
- (b) the Registrar of Titles shall, upon the application of the continuing bank or the continuing savings bank, register the applicant as the proprietor of land in the State (being land under the provisions of the *Transfer of Land Act 1893*) that has vested in the applicant in pursuance of this section; and
 - (c) an instrument relating to land (being land under the provisions of the *Transfer of Land Act 1893*) that has vested in the continuing bank or the continuing savings bank in pursuance of this section shall, if the instrument is executed by the continuing bank or the continuing savings bank, as the case may require, and is otherwise in registrable form, be registered by the Registrar of Titles notwithstanding that the relevant bank has not been registered as the proprietor of the land in pursuance of paragraph (b).
- (5) Where for any reason —
- (a) a liability to CBC immediately before the appointed day remains a liability to CBC on or after that day; or
 - (b) a liability to CBC Savings Bank immediately before the appointed day remains a liability to CBC Savings Bank on or after that day,

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

6. Transitional provision — CBC

Without prejudice to the generality of other provisions of this Act, the following provisions shall have effect on and after the appointed day —

- (a) an instruction, order, direction, mandate or authority given to CBC (other than in relation to an excluded asset) and subsisting immediately before the appointed day shall be deemed to have been given to the continuing bank;
- (b) an instrument given or addressed to CBC (other than in relation to an excluded asset) on or after the appointed day shall be deemed to have been given or addressed to the continuing bank;
- (c) a security held by CBC as security for a debt or other liability owed to CBC incurred before the appointed day shall be available to the continuing bank as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts owed to or liabilities to the continuing bank and incurred on or after the appointed day; and in relation to a security the continuing bank shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which CBC would have been entitled or subject if this Act had not been enacted;
- (d) all the rights and liabilities of CBC as bailee of documents or chattels shall be transferred to and assumed by the continuing bank;
- (e) a negotiable instrument or order for payment of money which, whether before, on or after the appointed day, is drawn on or given to or accepted or endorsed by CBC, or payable at a place of business of CBC, shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by the continuing bank instead of CBC, or was payable at

the place of business of the continuing bank (which the first-mentioned place of business is by this Act deemed to be);

- (f) the relationship between CBC and a customer or depositor shall become the same relationship between the continuing bank and the customer or depositor, and the same rights and liabilities including rights of set-off shall exist between the continuing bank and the customer or depositor as existed immediately before the appointed day between CBC and the customer or depositor;
- (g) all contracts, agreements, conveyances, deeds, leases, licences, instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by or addressed to CBC (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day (except to the extent that they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of CBC, be binding on and enforceable by, against or in favour of the continuing bank as fully and effectually in every respect as if, instead of CBC, the continuing bank had been the person by whom they were entered into, with whom they were made, to or by whom they were given or to whom they were addressed, as the case may be;
- (h) no legal proceedings commenced before the appointed day by, against or in favour of CBC shall abate or be otherwise prejudiced by reason of this Act;
- (j) nothing effected by this Act —
 - (i) shall be regarded as placing CBC or the continuing bank in breach of contract or confidence, or as otherwise rendering either of them liable for a civil wrong;

- (ii) shall be regarded as placing either of them in breach of any Act or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
- (iii) shall release any surety wholly or in part from all or any of his obligations;

and

- (k) nothing done or suffered by CBC or the continuing bank pursuant to this Act (not being something effected by this Act) —

- (i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong;
- (ii) shall be regarded as a breach of any Act or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
- (iii) shall release any surety wholly or in part from all or any of his obligations,

if it would not have had that effect had it been done or suffered by CBC if this Act had not been enacted.

7. Transitional provision — CBC Savings Bank

Without prejudice to the generality of other provisions of this Act, the following provisions shall have effect on and after the appointed day —

- (a) an instruction, order, direction, mandate or authority given to CBC Savings Bank (other than in relation to an excluded asset) and subsisting immediately before the appointed day shall be deemed to have been given to the continuing savings bank;
- (b) an instrument given or addressed to CBC Savings Bank (other than in relation to an excluded asset) on or after

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the appointed day shall be deemed to have been given or addressed to the continuing savings bank;

- (c) a security held by CBC Savings Bank as security for a debt or other liability owed to CBC Savings Bank incurred before the appointed day shall be available to the continuing savings bank as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts owed to or liabilities to the continuing savings bank and incurred on or after the appointed day; and in relation to a security the continuing savings bank shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which CBC Savings Bank would have been entitled or subject if this Act had not been enacted;
- (d) all the rights and liabilities of CBC Savings Bank as bailee of documents or chattels shall be transferred to and assumed by the continuing savings bank;
- (e) a negotiable instrument or order for payment of money which, whether before, on or after the appointed day, is drawn on or given to or accepted or endorsed by CBC Savings Bank, or payable at a place of business of CBC Savings Bank, shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by the continuing savings bank instead of CBC Savings Bank, or was payable at the place of business of the continuing savings bank (which the first-mentioned place of business is by this Act deemed to be);
- (f) the relationship between CBC Savings Bank and a customer or depositor shall become the same relationship between the continuing savings bank and the customer or depositor, and the same rights and liabilities including rights of set-off shall exist between the continuing savings bank and the customer or

depositor as existed immediately before the appointed day between CBC Savings Bank and the customer or depositor;

- (g) all contracts, agreements, conveyances, deeds, leases, licences, instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by or addressed to CBC Savings Bank (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day (except to the extent that they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of CBC Savings Bank, be binding on and enforceable by, against or in favour of the continuing savings bank as fully and effectually in every respect as if, instead of CBC Savings Bank, the continuing savings bank had been the person by whom they were entered into, with whom they were made, to or by whom they were given or to whom they were addressed, as the case may be;
- (h) no legal proceedings commenced before the appointed day by, against or in favour of CBC Savings Bank shall abate or be otherwise prejudiced by reason of this Act;
- (j) nothing effected by this Act —
 - (i) shall be regarded as placing CBC Savings Bank or the continuing savings bank in breach of contract or confidence, or as otherwise rendering either of them liable for a civil wrong;
 - (ii) shall be regarded as placing either of them in breach of any Act or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) shall release any surety wholly or in part from all or any of his obligations;

and

- (k) nothing done or suffered by CBC Savings Bank or the continuing savings bank pursuant to this Act (not being something effected by this Act) —
 - (i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong;
 - (ii) shall be regarded as a breach of any Act or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) shall release any surety wholly or in part from all or any of his obligations,if it would not have had that effect had it been done or suffered by CBC Savings Bank if this Act had not been enacted.

8. Assignment and subletting of leases

- (1) Where, under the provisions of a lease, licence or other contract or agreement, CBC or CBC Savings Bank has rights in respect of the occupation or use of land, being an excluded asset, those rights may, notwithstanding that there has been no assignment, transfer, underletting or other disposition by CBC or CBC Savings Bank, be exercised by the continuing bank or the continuing savings bank, as the case may be.
- (2) For the purposes of a lease, licence or other contract or agreement relating to the occupation or use of land, CBC or CBC Savings Bank does not part with possession of land by permitting the continuing bank or the continuing savings bank, as the case may be, to exercise rights under subsection (1) in respect of the land.

9. Continuity of legal proceedings

- (1) Legal proceedings to which CBC or CBC Savings Bank was a party immediately before the appointed day may be continued

by or against the continuing bank or the continuing savings bank, as the case may be.

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

10. Evidence

- (1) Documentary or other evidence which would have been admissible for or against the interests of CBC or CBC Savings Bank if this Act had not been enacted shall be admissible for or against the interests of the continuing bank or the continuing savings bank, as the case may be.
- (2) Notwithstanding the transfer of the undertakings of CBC and CBC Savings Bank to the continuing bank and the continuing savings bank, the provisions of sections 89 to 96 (inclusive) of the *Evidence Act 1906* shall continue to apply with respect to the bankers' books of CBC and CBC Savings Bank and to entries made in those bankers' books before the appointed day.
- (3) In subsection (2), *bankers' books* has the same meaning as in the *Evidence Act 1906*.

11. Employees

Notwithstanding any other provision of this Act —

- (a) on the appointed day each employee of CBC shall cease to be an employee of CBC and shall become an employee of the continuing bank, but for the purposes of every Act and other law, award, determination, contract and agreement relating to the employment of each such employee his contract of employment shall be deemed to be unbroken and the period of his service with CBC shall be deemed to have been a period of service with the continuing bank;

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- (b) the terms and conditions of the employment of each transferred employee with the continuing bank shall —
 - (i) on the appointed day (and thereafter until varied) be identical with the terms and conditions of his employment with CBC immediately before the appointed day, and be capable of variation in the same manner as they were immediately before that day; and
 - (ii) subject to any Act or other law, award or determination relating to those terms and conditions, also be capable of variation in the same manner as the general terms and conditions of employment of other persons employed by the continuing bank are capable of variation;
- (c) a transferred employee shall not be entitled to receive any payment or other benefit by reason only of his ceasing by virtue of this Act to be an employee of CBC;
- (d) nothing in this Act, other than paragraph (c), affects rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of CBC; and
- (e) a director, secretary or auditor of CBC or CBC Savings Bank does not by virtue of this Act become a director, secretary or auditor of the continuing bank or the continuing savings bank.

12. Appointment of new trustee

- (1) On the appointed day all property in, or subject to the laws of, the State and held, immediately before that day, by Commercial Nominees Pty. Limited as trustee shall be vested in National Nominees Limited to be held as trustee upon the same trusts subsisting immediately before that day.
- (2) On and after the appointed day —

- (a) Commercial Nominees Pty. Limited shall be wholly discharged as trustee of all the property vested by virtue of this section in National Nominees Limited;
 - (b) National Nominees Limited shall have the same powers, authorities and discretions in relation to each such trust as Commercial Nominees Pty. Limited had immediately before that property was so vested; and
 - (c) a reference to Commercial Nominees Pty. Limited in any instrument made or executed before the appointed day and relating to property so vested shall, unless the context otherwise requires, be read and construed as a reference to National Nominees Limited.
- (3) Any discharge or appointment of a trustee and any vesting of property by virtue of this section shall have effect notwithstanding anything to the contrary in any instrument or in any other Act or law.
- (4) In this section, a reference to Commercial Nominees Pty. Limited holding as trustee includes a reference to Commercial Nominees Pty. Limited acting as a trustee as defined in the *Trustees Act 1962*, and as a custodian trustee, a nominee and a person charged with the management or administration of property.
- (5) Without prejudice to the generality of the provisions of this section and notwithstanding anything to the contrary in any other Act or law, where any registered estate or interest in land (being land under the provisions of the *Transfer of Land Act 1893*) is by virtue of this section vested in National Nominees Limited, National Nominees Limited shall be deemed to be the registered proprietor of that estate or interest of which Commercial Nominees Pty. Limited is the registered proprietor and the estate or interest may be dealt with accordingly.

13. Transfer of certain shares etc.

- (1) Where prescribed securities are by virtue of this Act vested in the continuing bank, the continuing savings bank or National Nominees Limited, a certificate signed by a Managing Director of the continuing bank, or by an officer acting under delegation from him, stating that the prescribed securities have so vested shall, notwithstanding any other Act or law or the provisions of any instrument, be deemed to be a sufficient duly stamped instrument of transfer of those prescribed securities.
- (2) Subsection (1) applies only to and in respect of prescribed securities —
 - (a) which, when vested in the continuing bank or the continuing savings bank, will be held by way of security; or
 - (b) which are vested in National Nominees Limited by the operation of section 12.

14. Registration authority to give effect

The Registrar of Titles, the Registrar of Deeds, the Commissioner for Corporate Affairs, the Registrar of Bills of Sale, the Mining Registrar, and any other person authorised by an Act 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 this Act and is empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Act in relation to any land or property to which the documents properly relate.

15. Company charges

Subsection (1) of section 206 of the *Companies (Western Australia) Code* shall be deemed to have been complied with in respect of all charges of which the continuing bank or the continuing savings bank becomes the holder by virtue of this Act if there is lodged in the manner specified in paragraph (a) of

that subsection a certificate, in a form acceptable to the Commissioner for Corporate Affairs, signed by a Managing Director of the continuing bank, or by an officer acting under delegation from him, stating that by virtue of this Act the undertaking of CBC has become vested in the continuing bank and the undertaking of CBC Savings Bank has become vested in the continuing savings bank.

16. Protection of persons in respect of dealings with certain assets

- (1) No person dealing —
- (a) with the continuing bank or CBC (in any capacity whatsoever); or
 - (b) with the continuing savings bank or CBC Savings Bank (in any capacity whatsoever),

nor the Registrar of Titles, nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, shall, in respect of any dealing or transaction entered into or purporting to be entered into by the continuing bank, the continuing savings bank, CBC or CBC Savings Bank, be concerned to see or enquire into whether any property the subject of the dealing or transaction (whether or not that property is or includes an estate or interest in land) is or is not an excluded asset, or be affected by any notice, express, implied or constructive, that any such property is or is not an excluded asset.

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

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- (3) If any dealing or transaction is entered into by CBC or CBC Savings Bank with any person, in relation to or in connection with any property which has vested in the continuing bank or the continuing savings bank, as the case may be, under this Act, it shall be deemed in favour of that person and any person claiming through or under him that CBC or CBC Savings Bank, as the case may be, has full power and authority to enter into that dealing or transaction as if the property were an excluded asset.
- (4) Nothing in this section affects the liability of the continuing bank, the continuing savings bank, CBC or CBC Savings Bank, or any of them, in respect of anything done, or purporting to have been done, by the continuing bank, the continuing savings bank, CBC or CBC Savings Bank, as the case may be, in relation to or in connection with an excluded asset or any other property.

Notes

- ¹ This is a compilation of the *The Commercial Banking Company of Sydney Limited (Merger) Act 1982* and includes the amendments made by the other written laws referred to in the following table^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>The Commercial Banking Company of Sydney Limited (Merger) Act 1982</i>	54 of 1982	27 Aug 1982	1 Jan 1983 (see s. 2 and <i>Gazette</i> 15 Oct 1982 p. 4057)

Reprint 1: *The Commercial Banking Company of Sydney Limited (Merger) Act 1982* as at 7 Sep 2007

- ^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Standardisation of Formatting Act 2010</i> s. 50 ²	19 of 2010	28 Jun 2010	To be proclaimed (see s. 2(b))

- ² On the date as at which this compilation was prepared, the *Standardisation of Formatting Act 2010* s. 50 had not come into operation. It reads as follows:

50. Heading to preamble

- (1) This section amends the Acts listed in the Table.
- (2) In each Act listed in the Table after the long title insert:

Preamble