

No. 25 of 1998.

Banking Corporation (Corporatisation) Act 1998.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1998.

Banking Corporation (Corporatisation) Act 1998.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1998.

AN ACT

entitled

Banking Corporation (Corporatisation) Act 1998,

Being an Act to amend the *Banking Corporation Act* (Chapter 136) to provide for -

- (a) the corporatisation of the Banking Corporation; and
 - (b) the incorporation under the *Companies Act 1997* of a successor company and the transfer to that successor company of the assets, rights, liabilities and obligations of the Banking Corporation; and
 - (c) the transfer to the successor company of the officers and employees of the Banking Corporation and the preservation and transfer to the successor company of the superannuation and other entitlements of these officers and employees; and
 - (d) certain matters in relation to the rationalisation of the successor company; and
 - (e) the subsequent repeal of the *Banking Corporation Act* (Chapter 136),
- and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

NEW PART VII.

The Principal Act is amended by adding the following new Part:-

“PART VII. - TRANSFER OF ASSETS AND LIABILITIES, ETC.,

Division 1. - Preliminary.

“41. INTERPRETATION.

- (1) In this Part, unless the contrary intention appears -
 - “banking licence” means a licence to carry on banking business issued under the *Banks and Financial Institutions Act* (Chapter 137);
 - “direction” means a direction under Section 43;

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“liabilities” means liabilities, debts, charges, duties and obligations of every description (whether present or future, actual or contingent, and whether to be paid in Papua New Guinea or elsewhere) of the Banking Corporation as at the transfer date;

“Minister” means the Minister responsible for public enterprises or such other Minister as the Prime Minister determines under Section 148 of the *Constitution*;

“rationalisation”, subject to Subsection (2), means the reorganisation, during the rationalisation period, by the successor company of the assets, rights, liabilities and obligations transferred to it on the transfer date (including such further assets, rights, liabilities and obligations as are acquired by normal trading, but not including assets, rights, liabilities or obligations acquired by other than normal trading) by means of incorporation of a further company or further companies and the transfer of certain of such assets, rights, liabilities and obligations to such further company or companies;

“rationalisation company” means any further company or further companies referred to in the definition of “rationalisation”;

“rationalisation period” means the period between -

(a) the coming into operation of this Act; and

(b) 31 December 1998 or such further date as the Minister may, by notice in the National Gazette, specify;

“successor company” means the company incorporated under Section 42(1);

“transfer date” means the date of transfer specified by the Minister in the direction.

“(2) In relation to the definition of “rationalisation”, any question as to whether any matter, transaction, company incorporation or transfer of assets, rights, liabilities and obligations constitutes rationalisation or normal trading shall be referred to the Minister whose decision is final.

“42. CORPORATION MAY INCORPORATE A COMPANY.

(1) For the purposes of this Part, the Banking Corporation shall incorporate or cause to be incorporated under the *Companies Act 1997* a company (the “successor company”) having a constitution.

“(2) The constitution of the successor company incorporated under Subsection (1) shall -

(a) contain *inter alia* such provisions as are directed by or as are necessary to give effect to any decision of, the National Executive Council or the Minister relating to the corporatisation of the Banking Corporation; and

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- (b) contain powers enabling the company to carry on the businesses and transact with the assets, rights, liabilities and obligations transferred to it by Section 43; and
- (c) subject to Section 49, provide that, so long as the majority ownership in the successor company is held by the State, one of the basic objectives of the company, insofar as its general banking business is concerned, shall be to perform its functions and direct its policies to the greatest advantage of the people of Papua New Guinea.

“(3) The successor company shall, until otherwise directed by the National Executive Council, be wholly owned by the State and the shareholders on behalf of the State shall be the Minister or a company wholly owned by the State nominated by the Minister.

“(4) For the purposes of Subsection (2)(c), “successor company” includes any rationalisation company to which the general banking business of the successor company may be transferred.

“Division 2. - Transfer of Assets, Rights, Liabilities and Obligations of the Banking Corporation.

“43. DIRECTION TO TRANSFER ASSETS, ETC., OF THE BANKING CORPORATION TO THE SUCCESSOR COMPANY.

(1) The Minister shall, by direction published in the National Gazette, direct that the assets, rights, liabilities and obligations of the Banking Corporation be transferred to the successor company upon the consideration specified in the direction on the transfer date specified in the direction.

- “(2) On the transfer date -
- (a) all assets held by, all rights vested in and all obligations and liabilities imposed on the Banking Corporation immediately before the transfer date are transferred to the successor company; and
 - (b) all proceedings subsisting by or against the Banking Corporation in respect of the assets immediately before the transfer date are taken to be proceedings by or against the successor company and may, on and after the transfer date, be continued by or against the successor company; and
 - (c) any act, matter or thing done or omitted to be done before the transfer date by, to or in respect of the Banking Corporation in relation to the assets (to the extent that act, matter or thing has any force or effect) is taken to have been done or omitted to be done by, to or in respect of the successor company; and

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- (d) and thereafter, a reference, in any other Act, in any instrument made under any Act, or in any document of any kind, to the Banking Corporation is to be read as, or as including, a reference to the successor company; and
- (e) every chose-in action transferred by virtue of Subsection (1) is vested in the successor company and may, after the transfer date, be sued on, recovered or enforced by the successor company in its own name and it shall not be necessary for the successor company or the Banking Corporation to give notice to the person bound by the chose-in action of the transfer effected by Subsection (1); and
- (f) every right and obligation transferred by virtue of Subsection (1) is vested in the successor company and may, on and after the transfer date, be sued on, recovered or enforced by or against the successor company in its own name and it shall not be necessary for the successor company or the Banking Corporation to give notice to the person whose right or liability is affected by the transfer under Subsection (1); and
- (g) and thereafter, in the case of rights and obligations arising under any loans which are transferred by virtue of Subsection (1), the successor company may enter into such arrangements or agreements in relation to such rights or obligations with the State or any third party as shall be necessary.

“(3) The operation of this section is not to be regarded -

- (a) as constituting a breach of any obligation whether imposed by contract, statute, regulation or otherwise; or
- (b) as constituting a breach of any contractual or statutory provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- (c) as giving rise to any right or remedy of any party to any deed, agreement or other instrument, or as causing or permitting the termination of any deed, agreement or other instrument arising out of a change in the beneficial or legal ownership of any asset, right, liability or obligation or otherwise; or
- (d) as releasing any surety or other obligee wholly or in part from any obligation.

“(4) Where, under this section, the rights and obligations of the Banking Corporation under an agreement are transferred to the successor company -

- (a) the successor company becomes, on the transfer date, a party to the agreement in place of the Banking Corporation; and

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- (b) as from the transfer date, the agreement has effect as if the successor company had always been a party to the agreement; and
- (c) acts performed by the Banking Corporation under the agreement prior to the transfer date are deemed to have been performed by the successor company.

“(5) Any register maintained under any Act on which any property which is transferred by virtue of the direction is registered in the name of the Banking Corporation or is to be transferred to the Banking Corporation is deemed to be amended as from the transfer date by substituting the successor company for the Banking Corporation.

“(6) Without limiting the generality of Subsection (5) -

- (a) the Registrar of Titles shall, on written application by the successor company, without formal transfer, enter and register the successor company as the proprietor of land in the Register Book or the Register of Leases maintained under the ***Land Registration Act*** (Chapter 191) and issue the Certificate of Title or State Lease or other instrument evidencing title to land registered in the name of the successor company; and
- (b) the Minister responsible for land matters is deemed to have approved any transfer of any interest in land to the successor company where such approval is required under the ***Land Act 1996***; and
- (c) the Registrar of Titles shall, on written application by the successor company, without formal transfer, enter and register the successor company as mortgagee in respect of any mortgage or other security granted in favour of the Banking Corporation as mortgagee; and
- (d) the Registrar of Companies shall, on written application by the successor company, without formal transfer, enter and register the successor company as mortgagee or chargee of any charges or other securities registered in favour of the Banking Corporation as chargee or mortgagee in the appropriate register maintained under the ***Companies Act 1997***; and
- (e) the Registrar of the National Court shall, on written application by the successor company, without formal transfer, enter and register the successor company as mortgagee of any security registered in favour of the Banking Corporation as mortgagee under the ***Instruments Act*** (Chapter 254); and

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- (f) the Director of Civil Aviation shall, on written application by the successor company, without formal transfer, enter and register the successor company as mortgagee of any aircraft registered in favour of the Banking Corporation as mortgagee under the provisions of the *Civil Aviation Act* (Chapter 239); and
- (g) the Departmental Head of the Department responsible for merchant shipping matters shall, on written application by the successor company, without formal transfer, enter and register the successor company as mortgagee of any ship or vessel registered in favour of the Banking Corporation as mortgagee under the provisions of the *Merchant Shipping Act* (Chapter 242); and
- (h) where the approval of any Minister or the recommendation of the Mining Advisory Board is required under the *Mining Act 1990* in respect of the registration of any instrument under the *Mining Act 1990*, the -
 - (i) that Minister is deemed to have approved the instrument; and
 - (ii) the Mining Advisory Board is deemed to have recommended approval of the instrument,with effect from the transfer date; and
- (i) the Departmental Head of the Department responsible for mining matters and the Departmental Head of the Department responsible for petroleum and gas matters shall, on written application by the successor company, without formal transfer, enter and register the successor company as mortgagee or caveator of any tenement registered in favour of the Banking Corporation as mortgagee or caveator under the provisions of the *Mining Act 1990* or the *Petroleum Act* (Chapter 198).

“44. TRANSFER OF BANKING LICENCE.

(1) The banking licence issued to and held by the Banking Corporation immediately prior to the transfer date is, by virtue of the direction, deemed to have been issued to the successor company as at the transfer date and shall be held by the successor company upon the same terms and conditions existing as at the transfer date without the need for formal application, transfer or other act in relation to the banking licence.

“(2) The successor company shall, from the transfer date, comply with the banking licence, the *Banks and Financial Institutions Act* (Chapter 137) and the *Central Banking Act* (Chapter 138).

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“45. TRANSFER OF EMPLOYEES.

(1) Each employee of the Banking Corporation immediately prior to the transfer date shall, by virtue of the direction, as at the transfer date, be employed by the successor company on the same terms and conditions on which he was employed by the Banking Corporation immediately before the transfer date.

“(2) Each employee to whom Subsection (1) applies is deemed to have an accrued entitlement to benefits in his employment with the successor company equivalent to the benefits which he had accrued with the Banking Corporation immediately prior to the transfer date.

“(3) The transfer of employment under this Act shall not be, and shall not be taken -

(a) to be a breach, variation or termination of any contract of employment, or to interrupt the period of employment for any such employee, or to create any new contract of employment or create any entitlement with respect to employee benefits including annual leave, furlough leave and superannuation entitlement beyond those which would have been applicable to the employee had he continued to be employed by the Banking Corporation; or

(b) to confer any entitlement on any person to receive payment of any accrued entitlements.

“(4) Notwithstanding the provisions of any other law, the successor company may, with the approval of the Minister, establish a staff superannuation fund for the benefit of its employees and the employees of its rationalisation companies and its subsidiaries and the subsidiaries of its rationalisation companies, provided that the benefits conferred by such superannuation fund are no less favourable to its members than the benefits available from the National Provident Fund or any successor to the National Provident Fund.

“(5) For the purposes of Subsection (6) and Section 46 -

‘POSFB’ means the Public Officer’s Superannuation Fund Board;

‘relevant fund’ means, where the successor company has established a staff superannuation fund, that fund, and where it has not, the National Provident Fund;

‘employee’ includes any former employee of the Banking Corporation who has accrued superannuation entitlements in respect of his employment by the Banking Corporation and remaining to the credit of his account with POSFB to which he is immediately entitled at the transfer date;

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‘employee entitlements’ means the employee contribution component of the superannuation entitlements of each employee of the Banking Corporation immediately prior to the transfer date including all accrued interest thereon as calculated by the Public Officers Superannuation Fund Board and certified by the Auditor-General;

‘employer contributions’ means the employer contribution component of the superannuation entitlement of each employee of the Banking Corporation immediately prior to the transfer date including all accrued interest thereon as calculated and certified to the best of their knowledge and belief by the Public Officers Superannuation Fund Board and reported as true and fair by the Auditor-General.

“(6) On the transfer date -

- (i) employee entitlements shall be transferred by the POSFB to the relevant fund without penalty or deduction or tax; and
- (ii) the State shall pay, or secure the payment of, the employer contributions to the relevant fund without penalty.

“(7) This section applies notwithstanding the provisions of -

- (a) Section 36A of the *Public Officers Superannuation Fund Act 1990*; and
- (b) any other law.

“46. AUDITOR-GENERAL TO REPORT ON CERTAIN MATTERS.

(1) The Auditor-General shall, within 12 months of the transfer date, report -

- (a) to the Board of Directors of the successor company and to the State - the net book value of the assets and the net book value of the liabilities of the Banking Corporation immediately prior to the transfer date; and
- (b) to the relevant fund-the employee entitlements and the employer contributions as at the transfer date.

“(2) Within 28 days of receipt by the Board of Directors of the successor company and the State of the report of the Auditor-General the successor company shall issue shares as required by the consideration specified in the direction.

“(3) Within 28 days of receipt of the Auditor-General’s report issued under Subsection (1) the Minister shall cause to be published in the National Gazette such values reported by the Auditor-General.

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“47. TAXES AND DUTIES.

(1) For the purposes of the *Income Tax Act 1959*, the successor company is deemed to have acquired the assets, rights, liabilities and obligations specified in the direction at a value equal to their written down book value in the books of the Banking Corporation immediately prior to the transfer date.

“(2) The successor company shall be entitled to tax depreciation and to any other applicable tax deduction in respect of assets, rights, liabilities and obligations specified in the direction as if the successor company had owned such assets, rights, liabilities and obligations since such assets, rights, liabilities and obligations were first acquired by the Banking Corporation.

“(3) Shares issued to the Minister on behalf of the State are deemed to have been fully paid and issued for valuable consideration other than cash.

“(4) All the transfers specified in, or required to give effect to the direction shall be exempt from any and all stamp duty fee, tax, levy, value added tax, goods or services tax, charges or other duty or charge payable under any Act including, without prejudice to the foregoing generality -

- (a) *Civil Aviation Act* (Chapter 239); and
- (b) *Companies Act 1997*; and
- (c) *Income Tax Act 1959*; and
- (d) *Instruments Act* (Chapter 254); and
- (e) *Land Registration Act* (Chapter 191); and
- (f) *Merchant Shipping Act* (Chapter 242).

“(5) No registration fee shall be payable in respect of the authorised capital of the successor company and no tax or duty shall be payable on the issue of shares to the successor company or the Minister on behalf of the State.

“Division 3. - Provisions relating to Rationalisation.

“48. PROVISIONS RELATING TO RATIONALISATION.

- (1) The provisions of Sections 43, 44, 45 and 47 insofar as they -
- (a) require the amendment of any register without formal transfer; or
 - (b) require any person to do anything; or
 - (c) deem any approval or any recommendation of any approval to have been given; or
 - (d) grant any exemption from any and all stamp duty, fee, tax, levy, value added tax, goods or services tax, charges or other duty or charge payable under any Act; or

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- (e) relate to the transfer of officers and employees and their entitlements,

shall, during the rationalisation period, apply to and in respect of -

- (f) the incorporation of a rationalisation company or rationalisation companies; and
- (g) any transfer of assets, rights, liabilities and obligations and the transfer of officers and employees and their entitlements -
 - (i) from the successor company to a rationalisation company or rationalisation companies; and
 - (ii) from one rationalisation company to another rationalisation company or rationalisation companies.

and the provisions of Sections 43, 44, 45 and 47 shall be read and construed and applied accordingly.

“(2) Any question as to the application of this section shall be referred to the Minister, whose decision is final.

“Division 4. - Community Service Obligations.

“49. MINISTER MAY GIVE DIRECTIONS TO THE BOARD.

- (1) For the purposes of this section -

“community service obligation” means the obligation on the successor company, insofar as its general banking business is concerned, to achieve the objective, referred to in Section 42(2)(c), to perform its functions and direct its policies to the greatest advantage of the people of Papua New Guinea;

“financial detriment” includes, without limitation -

- (a) costs or expenditure incurred or likely to be incurred in excess of that which would otherwise be incurred or likely to be incurred; and
- (b) revenue that would be forgone or likely to be forgone which would otherwise be received or likely to be received; and
- (c) both fixed and recurring costs and expenditure;

“successor company” includes any rationalisation company to which the general banking business of the successor company is transferred.

“(2) Subject to this section, the Minister may, after consultation with the Board of the successor company give to the Board such written directions in relation to the community service obligation as appear to the Minister to be necessary in the public interest.

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“(3) Any written direction given by the Minister under Subsection (2) shall specify the amount by which the successor company is to be compensated in accordance with Subsection (4).

“(4) Where the successor company satisfies the Minister that it will, or will be likely to, suffer financial detriment as a result of complying with a direction to be given under Subsection (2), the successor company shall be entitled to be compensated by the State for an amount that the Minister, after consultation with the Board, reasonably determines to be the amount necessary adequately to compensate the successor company for the financial detriment suffered, or likely to be suffered, both immediately and in the future as a result of complying with the direction.

“(5) Prior to giving a direction under Subsection (2), the Minister shall -

- (a) have regard to any advice that the Board has given to the Minister as to the financial detriment which will, or will be likely to, be suffered by the successor company; and
- (b) have the amount of compensation to be paid to the successor company in accordance with Subsection (4) included in the National Budget of the State.

“(6) The Minister shall not give a direction under Subsection (2) in relation to -

- (a) the manner in which the successor company carries on the general banking business; or
- (b) amounts to be charged for work done, or services, goods or information supplied by the successor company.

“(7) The Minister shall cause a copy of any direction under Subsection (2), to be laid before Parliament within 15 sitting days after the direction is given.

“Division 5. - Banking Corporation to Cease Business, Repeal, Costs and Regulations.

“50. BANKING CORPORATION TO CEASE BUSINESS.

Subject to Section 52 on and from the transfer date, except to the extent necessary to facilitate the provisions of this Part, the Banking Corporation shall cease to carry out its business undertaking, and this Act is deemed to be amended so as to give effect to this section.

“51. REPEAL.

Subject to Sections 50 and 52, the *Banking Corporation Act* (Chapter 136) (other than this Part and except to the extent necessary to give effect to this Part) is deemed to be repealed on the day after completion of the transfer of the business undertaking and the final issue of shares and other matters required to be carried out under the provisions of this Part.

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“52. SAVINGS.

(1) The provisions of this Act repealed by Section 51 are saved to the extent necessary to give effect to the provisions of this Part.

“(2) Section 32 shall apply to the successor company after the transfer date subject to the following:-

- (a) the guarantee of the State shall only extend to that percentage of the liabilities of the successor company that is equal to the percentage beneficial interest of the State in the capital of the successor company at the time the liability was incurred; and
- (b) the guarantee of the State shall not apply to liabilities incurred after the beneficial interest of the State falls below 50%.

“53. REIMBURSEMENT OF COSTS.

(1) The State shall reimburse the successor company all costs incurred by it and by the Banking Corporation in relation to the implementation of this Part.

“(2) The successor company shall be entitled to deduct the amount of the costs referred to in Subsection (1) from any amounts including any distributions due by it to the State.

“54. REGULATIONS.

The Head of State, acting on advice, may, by Regulation -

- (a) make such modifications to the provisions of this Act as may appear necessary for preventing anomalies; and
- (b) make such incidental, consequential and supplementary provisions as may be necessary for the purpose of giving full effect to the provisions of this Part.”.

I hereby certify that the above is a fair print of the ***Banking Corporation (Corporatisation) Act 1998*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Banking Corporation (Corporatisation) Act 1998*** was made by the National Parliament on 30 September 1998.

Speaker of the National Parliament.