

TRUSTEE BANKS RESTRUCTURING ACT REPEAL BILL

AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE

THIS bill was formally part of the Trustee Banks Restructuring Act Repeal Bill as reported from the Commerce Committee. The committee of the whole House has divided the bill into 2 separate bills as follows:

- This bill, comprising Part 1 and Schedules 1 and 2
 - The Community Trusts Bill, comprising Part 2.
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Hon Bill English

TRUSTEE BANKS RESTRUCTURING ACT REPEAL

ANALYSIS

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A BILL INTITULED

An Act to repeal the Trustee Banks Restructuring Act 1988

BE IT ENACTED by the Parliament of New Zealand as follows:

- 5 **1. Short Title and commencement**—(1) This Act may be cited as the Trustee Banks Restructuring Act Repeal Act 1998.
 (2) This Act comes into force on the day after the date on which it receives the Royal assent.
- 10 **2. Purpose of this Part**—The purpose of this Part is to repeal the Trustee Banks Restructuring Act 1988, and to re-enact the provisions of that Act that continue to apply to trustee banks and their successor companies.
- 3. Part to bind the Crown**—This Part binds the Crown.
- 15 **4. Interpretation**—In this Part, unless the context otherwise requires,—
 “Trustee bank” means a trustee bank established under the Trustee Banks Act 1983:

“Trustee bank’s successor company”, in relation to a trustee bank, means a company formed and registered by that trustee bank and in which the undertaking of the trustee bank was vested under the Trustee Banks Restructuring Act 1988.

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5. Repeal of Trustee Banks Restructuring Act 1988—
The enactments specified in **Schedule 1** are repealed.

6. Provisions applying to trustee banks and successor companies—The provisions in **Schedule 2** apply in relation to every trustee bank and every trustee bank’s successor company.

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SCHEDULES

SCHEDULE 1

Section 5

ENACTMENTS REPEALED

- 1988, No. 90—The Trustee Banks Restructuring Act 1988.
1988, No. 119—The Trustee Amendment Act 1988: So much of the Fourth Schedule as relates to the Trustee Banks Restructuring Act 1988.
1989, No. 27—The Trustee Banks Restructuring Amendment Act 1989.
1989, No. 44—The Public Finance Act 1989: So much of the First Schedule as relates to the Trustee Banks Restructuring Act 1988. (R.S. Vol. 33, p. 510)
1989, No. 157—The Reserve Bank of New Zealand Act 1989: Section 183.
1994, No. 164—The Income Tax Act 1994: So much of Schedule 20 as relates to the Trustee Banks Restructuring Act 1988.

SCHEDULE 2

Section 6

PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES

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1. Interpretation—In this Schedule, unless the context otherwise requires,—

“Appointed day” means the date on which the undertaking of a trustee bank vested in that trustee bank’s successor company under section 6 of the Trustee Banks Restructuring Act 1988; being—

(a) 1 September 1988 in relation to ASB Bank Limited, Trust Bank Bay of Plenty Limited, Trust Bank Central Limited, Trust Bank Canterbury Limited, Trust Bank Otago Limited, Trust Bank South Canterbury Limited, Trust Bank Southland Limited, Trust Bank Waikato Limited, Trust Bank Auckland Limited, Trust Bank Wellington Limited, and Westland Bank Limited:

(b) 9 September 1988 in relation to Taranaki Savings Bank Limited:

“Inland Revenue Acts” means the Acts specified in the Schedule to the Tax Administration Act 1994:

“Instrument” includes—

(a) An instrument that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy of it were lodged, filed, or registered under an Act; and

(b) A judgment, order, or process of a court:

SCHEDULE 2—*continued*PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

“Instrument by way of security” has the meaning assigned to it in section 2 of the Chattels Transfer Act 1924:

“Liabilities” means liabilities, debts, charges, duties, and obligations (whether present or future, actual or contingent, or payable or to be observed or performed in New Zealand or elsewhere):

“Property” means real or personal property; and includes—

(a) Choses in action and money:

(b) Goodwill:

(c) Rights, interests, and claims in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument and whether liquidated or unliquidated, actual, contingent, or prospective:

“Rights” means rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

“Security”—

(a) Means a mortgage, charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the payment of money or for the discharge of any other obligation or liability and whether on demand or not, present or future, actual, or contingent; and

(b) Includes an agreement or undertaking to give or execute, whether on demand or not, any of the things specified in paragraph (a).

Cf. 1988, No. 90, s. 2

2. References to trustee bank and its officers in existing instruments—(1) A reference (express or implied) to a trustee bank in any instrument made, given, passed, or executed before the appointed day must be read as a reference to that trustee bank’s successor company.

(2) A reference (express or implied) to the holder of an office (other than the office of trustee, secretary, or auditor) within a trustee bank in an instrument made, given, passed, or executed before the appointed day must be read as a reference to the person who, for the time being, holds office as the chief executive of its successor company or another officer of the company who is designated from time to time by the chief executive or by another person acting under delegation from the chief executive.

Cf. 1988, No. 90, s. 7 (a), (h)

3. Relationship with customers—(1) On and from the appointed day, the relationship between a trustee bank and a customer or depositor remains the same relationship between the successor company and that customer or depositor.

(2) The same rights and liabilities, including rights of set-off, continue to exist between the successor company and a customer or depositor as existed between the trustee bank and that customer or depositor immediately before the appointed day.

Cf. 1988, No. 90, s. 7 (b)

SCHEDULE 2—*continued*

PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

4. Status of contracts and other instruments—Contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether in writing or not), entered into by, made with, given to or by, or addressed to a trustee bank (whether alone or with another person) before the appointed day and subsisting immediately before the appointed day are binding on, and enforceable by, against, or in favour of the trustee bank's successor company as if the company and not the trustee bank had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed.

Cf. 1988, No. 90, s. 7 (c)

5. Status of existing instructions—An instruction, order, direction, mandate, or authority given to a trustee bank and subsisting immediately before the appointed day is deemed to have been given to its successor company.

Cf. 1988, No. 90, s. 7 (d)

6. Status of securities—(1) A security held by a trustee bank as security for a debt or other liability to the trustee bank incurred before the appointed day is available to its successor company as security for the discharge of that debt or liability and, if the security extends to future or prospective debts or liabilities, is available as security for the discharge of debts or liabilities to the company incurred on or after the appointed day.

(2) The company is entitled to the same rights and priorities and is subject to the same liabilities in relation to the security as the trustee bank.

Cf. 1988, No. 90, s. 7 (e)

7. Rights as bailor or bailee—All rights and liabilities of a trustee bank as bailor or bailee of documents or chattels are vested in and assumed by its successor company.

Cf. 1988, No. 90, s. 7 (f)

8. Status of negotiable instruments—Unless the context otherwise requires, a negotiable instrument or order for payment of money which was drawn on, given to, accepted by, or indorsed by a trustee bank before the appointed day, or was payable at a place of business of the trustee bank, has the same effect on and after the appointed day as if it had been drawn on, given to, accepted by, indorsed by, or was payable at the place of business of, the successor company.

Cf. 1988, No. 90, s. 7 (g)

9. Effect of this Act—Nothing in this Act, and nothing done under this Act,—

- (a) Places a trustee bank's successor company or any other person in breach of contract or confidence, or makes any of them liable for a civil wrong; or
- (b) Entitles a person to terminate or cancel a contract or arrangement or to accelerate the performance of an obligation; or
- (c) Places a trustee bank's successor company, or any other person in breach of an enactment, a rule of law, or a provision of a contract

SCHEDULE 2—*continued*PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or

- (d) Releases a surety from an obligation; or
- (e) Invalidates or discharges a contract or security.

Cf. 1988, No. 90, s. 7 (i)

10. Continuation of proceedings—(1) An action, arbitration, proceeding, or cause of action that was pending or existing by, against, or in favour of a trustee bank or to which the bank was a party before the appointed day may be continued and enforced by, against, or in favour of its successor company.

(2) It is not necessary to amend a writ, pleading, or other document to continue the action, arbitration, proceeding, or cause of action.

Cf. 1988, No. 90, s. 7 (j)

11. Employees—(1) On and from the appointed day each employee of a trustee bank is an employee of its successor company.

(2) For the purposes of an enactment, rule of law, contract, or agreement relating to an employee, the contract of employment of the employee is unbroken and a period of service with the trustee bank is a period of service with the company.

(3) The terms and conditions of employment of the employee are the same as the terms and conditions of his or her employment with the trustee bank immediately before the appointed day, but they may be varied in the same manner.

(4) An employee is not entitled to receive a payment or other benefit because the employee has, by reason solely of the Trustee Banks Restructuring Act 1988, ceased to be an employee of the trustee bank.

(5) Property held on trust or vested in a person under any provident, benefit, superannuation, or retirement fund or scheme for the employees of a trustee bank, their dependants, or other persons immediately before the appointed day is, on and after the appointed day, held on trust or vested in that person for those employees (in their capacity as employees of the successor company), their dependants, or other persons on the same terms and conditions.

(6) A reference in an instrument constituting a fund or scheme referred to in **subclause (5)** to a trustee bank, an employee of the trustee bank, a dependant of that employee, or any other person is a reference to the trustee bank's successor company, an employee of that company, a dependant of that employee, or any other person.

(7) This clause applies despite anything else in this Schedule.

Cf. 1988, No. 90, s. 9

12. Books and documents to remain evidence—(1) A document, matter, or thing which would have been admissible in evidence for or against a trustee bank is, on and after the appointed day, admissible in evidence for or against the trustee bank's successor company.

(2) In this clause, "document" has the meaning given to it in section 2 (1) of the Evidence Amendment Act (No. 2) 1980.

Cf. 1988, No. 90, s. 10

SCHEDULE 2—*continued*

PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

13. Registers—(1) A Registrar of Deeds, District Land Registrar, or any other person charged with keeping books or registers is not required to change the name of a trustee bank to the name of its successor company in the books, registers, or a document solely by reason of the provisions of the Trustee Banks Restructuring Act 1988.

(2) The presentation to a registrar or other person of an instrument, whether it is an instrument of transfer or not, by a trustee bank's successor company is, in the absence of evidence to the contrary, sufficient proof that the property is vested in the company if the instrument—

- (a) Is executed or purports to be executed by the company; and
- (b) Relates to property held by the trustee bank immediately before the appointed day; and
- (c) Contains a recital that the property became vested in the company by virtue of the provisions of the Trustee Banks Restructuring Act 1988.

Cf. 1988, No. 90, s. 11

14. Taxes and duties—For the purposes of the Inland Revenue Acts and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge,—

- (a) A trustee bank and its successor company are the same person; and
- (b) A transaction entered into by, and an act of, a trustee bank is—
 - (i) Entered into by, or an act of, the trustee bank's successor company; and
 - (ii) Entered into or performed by the company at the time it was entered into or performed by the trustee bank.

Cf. 1988, No. 90, s. 12

15. Ownership accounts—(1) On and after the appointed day, a trustee bank's successor company is deemed to be an authorised savings institution for the purposes of—

- (a) The Farm Ownership Savings Act 1974;
- (b) The Home Ownership Savings Act 1974;
- (c) The Fishing Vessel Ownership Savings Act 1977.

(2) A Farm Ownership Account (within the meaning of section 2 (1) of the Farm Ownership Savings Act 1974) subsisting with a trustee bank immediately before the appointed day is, on and after the appointed day, deemed to be a Farm Ownership Account with that trustee bank's successor company, and the provisions of that Act apply with any necessary modifications.

(3) A Home Ownership Account (within the meaning of section 2 (1) of the Home Ownership Savings Act 1974) subsisting with a trustee bank immediately before the appointed day is, on and after the appointed day, deemed to be a Home Ownership Account with that trustee bank's successor company, and the provisions of that Act apply with any necessary modifications.

(4) A Fishing Vessel Ownership Account (within the meaning of section 2 (1) of the Fishing Vessel Ownership Savings Act 1977) subsisting with a trustee bank immediately before the appointed day is, on and after the appointed day, deemed to be a Fishing Vessel Ownership Account with that

SCHEDULE 2—*continued*PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

trustee bank's successor company, and the provisions of that Act apply with any necessary modifications.

Cf. 1988, No. 90, s. 41