NORTHERN TERRITORY OF AUSTRALIA

THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED (MERGER) ACT

As in force at 1 January 2013

Table of provisions

1	Short title	2
2	Commencement	2
3	Definitions	2
4	Act binds Crown	3
5	Vesting of undertakings of merging bank and Savings Bank	3
6	Transitional	5
7	Assignment and subletting of lease	8
8	Continuity of legal proceedings	9
9	Evidence	9
10	Officers and employees	9
11	Appointment of new trustees	10
12	Company to register holder of shares, &c.	11
13	Protection of persons in respect of dealings with excluded assets	11
14	Duty not payable	12

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 January 2013. Any amendments that commence after that date are not included.

THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED (MERGER) ACT

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 other 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 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 interest of efficiency in banking, 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 that the transfers be effected by an Act:

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 Limited of the undertaking of C. B. C . Savings Bank Limited and for the vesting in National Nominees Pty Limited of all property held by Commercial Nominees 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 the Territory 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 the Territory in National Nominees Limited, it is expedient to make this Act:

1 Short title

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

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

appointed day means the date of commencement of this Act.

CBC means The Commercial Banking Company of Sydney Limited.

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

continuing bank means The National Bank of Australasia Limited.

continuing savings bank means The National Bank Savings Bank Limited.

corporation includes a body corporate and a body politic.

excluded assets means:

(a) documents required by law to be kept by CBC or CBC Savings Bank;

(b) shares in corporations held, immediately before the appointed day, by or on behalf of CBC or CBC Savings Bank otherwise than by way of security; or

(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 a law of the Territory, and includes a judgment, order or process of a court.

land includes an estate or interest in land, and an interest in respect of land.

law of the Territory includes an Act, an instrument of a legislative or administrative character and the common law in force in the Territory.

legal proceedings includes an arbitration.

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

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.

rights means all rights, powers and 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.

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, other than excluded assets; or

(b) all rights and liabilities of the relevant bank, other than rights and liabilities relating to excluded assets.

4 Act binds Crown

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 an instrument made, passed or executed before that day shall, except to the extent 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 an instrument made, passed or executed before that day shall, except to the extent 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 an instrument made or executed before that day shall be read and construed as a reference to the 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 another officer acting under delegation from him.

(3) On and after the appointed day:

(a) a place of business of CBC, wherever located, shall be deemed to be a place of business of the continuing bank; and

(b) a 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 limiting the generality of subsection (3), but notwithstanding anything to the contrary in any other law of the Territory, where a registered estate or interest in land under the *Real Property Act* is, by virtue of this Act, vested in the continuing bank or the continuing savings bank:

(a) the continuing bank shall be deemed to be the registered proprietor of such estate or interest of which CBC was, immediately before the appointed day, the registered proprietor; and

(b) the continuing savings bank shall be deemed to be the registered proprietor of such estate or interest of which CBC Savings Bank was the registered proprietor,

and such land may be dealt with accordingly.

(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 a security relating thereto, as if this Act had not been passed.

6 Transitional

(1) Without limiting the generality of this Act, on and after the appointed day:

(a) an instruction, order, direction, mandate or authority given to CBC 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 on or after the appointed day, not being an instrument relating to an excluded asset, 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 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 or liabilities to the continuing bank 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 passed;

(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 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 that 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 shall (except to the extent that they relate to an excluded asset), 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 or to or by whom they were given or 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 done or suffered by CBC or the continuing bank pursuant to this Act:

(i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong; or

(ii) shall release any surety wholly or in part from all or any of his obligations; and

(k) without limiting the generality of paragraph (j), for the purposes of any contractual provision or rule of law or equity prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information, neither CBC nor the continuing bank is, by reason only of anything effected by or done under this Act, in breach of that provision or rule.

(2) Without limiting the generality of this Act, on and after the appointed day:

(a) an instruction, order, direction, mandate or authority given to CBC Savings Bank 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 on or after the appointed day, not being an instrument relating to an excluded asset, 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 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 or liabilities to the continuing savings bank 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 passed;

(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 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 that 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 shall (except to the extent that they relate to an excluded asset), 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 or to or by whom they were given or 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 done or suffered by CBC Savings Bank or the continuing savings bank pursuant to this Act:

(i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong; or

(ii) shall release any surety wholly or in part from all or any of his obligations; and

(k) without limiting the generality of paragraph (j), for the purposes of any contractual provision or rule of law or equity prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information, neither CBC Savings Bank nor the continuing savings bank is, by reason of anything effected by or done under this Act, in breach of that provision or rule.

7 Assignment and subletting of lease

(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 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.

8 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.

9 Evidence

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 passed shall be admissible for or against the interests of the continuing bank or the continuing savings bank, as the case may be.

10 Officers and 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 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;

(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; and

(ii) subject to any 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) of this section 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.

11 Appointment of new trustees

(1) On the appointed day, all property held by Commercial Nominees Pty. Limited as trustee shall be vested in National Nominees Limited to be held as trustee upon the same trusts subsisting upon the appointed 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 the 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) A discharge or appointment of a trustee and vesting of property by virtue of this section shall have effect notwithstanding anything to the contrary in any instrument or in any other law of the Territory.

(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 within the meaning of the *Trustee Act* and as a custodian trustee, a nominee and a person charged with the management or administration of property.

(5) Without limiting the generality of this section, and notwithstanding anything to the contrary in any other law of the Territory, where a registered estate or interest in land under the *Real Property Act* 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.

12 Company to register holder of shares, &c.

A certificate signed by a Managing Director of the continuing bank, or by an officer acting under delegation from him, stating that shares in, debentures of, or interests made available by, a corporation are, by virtue of this Act, vested in the continuing bank, the continuing savings bank or National Nominees Limited shall, notwithstanding any other law of the Territory or the provisions of any instrument, be registered by that corporation in the same manner in all respects as if it were a proper instrument of transfer (duly stamped) of those shares, debentures or interests.

13 Protection of persons in respect of dealings with excluded assets

(1) No person dealing:

(a) with the continuing bank or CBC; or

(b) with the continuing savings bank or CBC Savings Bank,

nor the Registrar-General, 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 a 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 inquire into whether any property the subject of the dealing or transaction (whether or not that property is land) is an excluded asset, or be affected by a notice, express, implied or constructive, that such property is or is not an excluded asset.

(2) If a dealing or transaction is entered into by the continuing bank or the continuing savings bank with a person, in relation to or in connection with an excluded asset, it shall be deemed in favour of

that person and any other 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.

(3) If a dealing or transaction is entered into by CBC or CBC Savings Bank with a person, in relation to or in connection with an asset 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 asset were an excluded asset.

14 Duty not payable

Notwithstanding anything to the contrary in any other law of the Territory, no duty of any kind is chargeable or payable on an instrument, certificate or document or in respect of an act or transaction executed, done, suffered or entered into for the purposes of this Act or of a corresponding law of the Commonwealth or of a State or another Territory of the Commonwealth.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

The Commercial Banking Company of Sydney Limited (Merger) Act 1982 (Act No. 42, 1982)

Assent date	29 June 1982
Commenced	1 January 1983 (*Gaz* G48, 3 December 1982, p 5)

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date	13 September 2002
Commenced	30 October 2002 (*Gaz* G43, 30 October 2002, p 3)

Evidence (National Uniform Legislation) (Consequential Amendments) Act 2012 (Act No. 23, 2012)

Assent date	21 November 2012
Commenced	1 January 2013 (*Gaz* G51, 19 December 2012, p 4)

3 LIST OF AMENDMENTS

s 9 amd No. 38, 2002, s 6; No. 23, 2012, s 32