

THE REPUBLIC OF KIRIBATI
(No. 4 of 1984)

I assent,

N. Tebani
Beretitenti
21/8/1984.

AN ACT TO PROVIDE FOR THE TRANSFER OF ASSETS
AND LIABILITIES OF WESTPAC BANKING CORPORATION
AND WESTPAC SAVINGS BANK LIMITED RELATING TO THE
BANKING BUSINESS CARRIED ON BY EACH OF THEM IN
KIRIBATI TO A COMPANY TO BE DESIGNATED UNDER
SECTION 3 AND FOR PURPOSES CONNECTED AND INCIDENTAL
THEREFO.

Commencement:

1984.

MADE by the Maneaba ni Maungatabu and assented to by the
Beretitenti.

Short title and
commencement.

1(1) This Act may be cited as the Banking (Special Provisions)
Act 1984.

(2) This Act shall come into operation on such date as the
Minister may by notice appoint.

Interpretation.

2(1) In this Act, unless the context otherwise requires -

"appointed date" means the date appointed pursuant to
subsection (2) of Section 1 of this Act;

"customer" means any person having an existing banking
account or other dealing, transaction or arrangement
with any of the existing banks in the course of banking
business conducted in Kiribati by the existing bank;

"designated bank" means the company designated by the
Minister pursuant to section 3;

"excluded employee" means any person, other than a citizen of
Kiribati, who is, immediately before the appointed
date, employed by any of the existing banks;

"excluded liability" in relation to any provision of this
Act means any liability in respect of the banking
business in Kiribati of any of the existing banks
in respect of which the Minister has, by notice,
stipulated its exclusion from transfer of Kiribati
business under this Act;

"existing banks" means the Westpac Banking Corporation and the Westpac Savings Bank Limited carrying on the business of banking in Kiribati;

"Kiribati business" means, in relation to any of the existing banks -

- (a) all property of that bank in Kiribati, and all property of that bank, wherever situate, in respect of its banking business in Kiribati, which is vested in, belongs to or is held by that bank; and
- (b) all liabilities of that bank in Kiribati and all liabilities of that bank, wherever situate, other than any excluded liability, to which that bank is subject in respect of its banking business in Kiribati;

immediately before the appointed date;

"liabilities" means liabilities of every kind and includes obligations of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

"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 -

- (a) choses in action; and
- (b) rights, interests and claims of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

"security" means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, indemnity or undertaking or any other instrument for or means of securing the payment of or discharge of a debt, liability or obligation (whether present or future, actual or contingent);

"will" includes a codicil and any other testamentary writing.

3. When -

- (a) a company by the name of the Bank of Kiribati Ltd has been formed under the Companies Ordinance to carry on commercial banking and savings bank business in Kiribati; and

- (b) arrangements, satisfactory to the Minister, have been made to involve Westpac Banking Corporation in the carrying on of that business,

the Minister shall, designate in writing the company so formed.

4(1) Upon the appointed date, by operation of this subsection, the Kiribati business of each of the existing banks shall cease to be the property and liabilities of that bank and shall become the property and liabilities of the designated bank.

(2) Where the transfer of vesting of any property forming part of the Kiribati business of any of the existing banks is governed otherwise than by the law of Kiribati the existing bank concerned shall as soon as is practicable after the appointed date take all necessary steps for securing the effective transfer or vesting of the property to or in the designated bank and, pending such transfer or vesting the existing bank concerned shall hold any such property in trust for the designated bank.

- (3) A transfer or vesting effected pursuant to this Act shall -
- (a) not operate as a breach of any covenant or condition against alienation;
 - (b) not give rise to any forfeiture;
 - (c) not invalidate or discharge any contract or security;
 - (d) operate notwithstanding any caveat, caution, inhibition or restriction made or entered under any written law relating to dealing with land.

(4) All contracts, agreements, conveyances, deeds, leases, licences and other instruments or undertakings entered into by, made with or addressed to any of the existing banks (whether alone or with any other person) before the appointed date and in effect on that date in respect of the Kiribati business of that bank, shall on and after that date, to the extent that they were previously binding on and enforceable against or in favour of that bank, be binding on and of full force and effect in every respect against or in favour of the designated bank, as fully and effectively as if, instead of that bank, the designated bank had been a party to them or bound by them or entitled to the benefit of them.

(5) Without limiting the generality of subsection (1) and subsection (4) the following paragraphs shall apply, in relation to the Kiribati business of each of the existing banks -

- (a) on and after the appointed date -
- (i) the relationship between the existing bank and a customer becomes the same relationship between the designated bank and that customer; and
 - (ii) the same rights, liabilities and duties exist between the designated bank and the customer that existed before that date between the existing bank and the customer; and

- (iii) any instruction, order, direction, mandate or authority -
 - (A) given by a customer to the existing bank and in effect on; or
 - (B) given to the existing bank after, the appointed date is of full force and effect, unless sooner revoked, rescinded or cancelled, as though it had been given to the designated bank; and
- (b) on the appointed date any security held by the existing bank as security for the payment of debts or liabilities (whether present or future, actual or contingent) of any person is transferred to the designated bank and may be held by and be available to the designated bank as security for the payment of those debts and liabilities; and
- (c) where any security transferred under paragraph (b) extends to future advances or future liabilities of the person referred to in that paragraph, on and after the appointed date the security may be held by and is available to the designated bank as security for future advances to that person by, and future liabilities of that person, to, the designated bank to the same extent as future advances by or liabilities to the existing bank were secured by them immediately before that date; and
- (d) the designated bank is, in relation to any security referred to in paragraph (b) and the moneys secured by it, entitled to the same rights and priorities, and is subject to the same obligations and incidents as the existing bank, from which the security was transferred, would have been entitled and subject to, had it continued to hold the security; and
- (e) on the appointed date the custody of any document, goods or thing held by the existing bank as bailee for any other person is or are transferred, to the designated bank together with all the rights and obligations of the existing bank under any contract of bailment relating to the document, goods or thing; and
- (f) on and after the appointed date any negotiable instrument or order for payment of money, whether drawn, given, accepted or endorsed before, on or after the appointed date, which is expressed to be drawn on, or given to, or accepted or endorsed by the existing bank, or payable at the place of business of the existing bank, has the same effect as if it had been drawn, or given to, or accepted or endorsed by, the designated bank, or is payable at the same place of business of the designated bank, as the case requires.

Trust
property.

5(1) Any property transferred to or vested in the designated bank pursuant to this Act which, immediately before the appointed date, was held by any of the existing banks, whether alone or jointly with any other person -

- (a) as trustee or custodian trustee under any trust deed, settlement, covenant, contract or will and whether originally so appointed or not, and whether appointed under hand or seal, or by order of any court;
 - (b) as executor of the will of a deceased person;
 - (c) as administrator of the estate of a deceased person;
 - (d) as judicial trustee appointed by order of any court;
- or
- (e) in any other fiduciary capacity whatsoever;

shall on and after the appointed day be held by the designated bank alone or jointly with such other person as the case may be, in the same capacity upon the trusts, and with and subject to the powers, provisions, liabilities and obligations applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property became vested in any of the existing banks in any such capacity as is mentioned in subsection (1) and any provision therein or any existing contract or arrangement for the payment to, or retention by, the existing bank or remuneration for its services in any such capacity, shall on or after the appointed date be construed and have effect so far as the context permits, as if any reference therein to the existing bank (other than a reference, however worded and whether express or implied, to terms and conditions or to a scale of fees of the existing bank), is a reference to the designated bank.

Wills.

6(1) Where, on or after the appointed date, any person dies leaving property in Kiribati and a will, whether executed before, on or after the appointed date, which appoints or purports to appoint any of the existing banks whether alone or jointly with any other person to be the executor or executor and trustee thereof, such will shall be construed and have effect as if the reference therein to any of the existing banks as such executor or executor and trustee is a reference to the designated bank.

(2) No testamentary disposition shall be invalidated by reason only of the operation of any of the provisions of this Act.

Employees.

7(1) Any person, other than an excluded employee, who is employed by any of the existing banks in Kiribati immediately before the appointed date, shall on such day become an employee of the designated bank and such employment with such existing bank and the designated bank shall be deemed to be a single continuing employment.

(2) The terms and conditions of the employment of each employee of each of the existing banks transferred to the designated bank pursuant to subsection (1) shall -

- (a) on the appointed date, and thereafter until varied, be identical with the terms and conditions of his employment with the existing bank concerned immediately before the appointed date and be capable of variation in the same manner as they were immediately before the appointed date; and
- (b) be capable of variation in the same manner as the general terms and conditions of employment of other persons employed by the designated bank are capable of variation.

(3) Any reference to any of the existing banks in any trust deed or rules constituting or relating to any pension or widows and orphans schemes or provident or superannuation fund of which persons, other than excluded employees, employed by the existing bank in Kiribati are members shall, on and after the appointed date, be construed and have effect as if the same is a reference to the designated bank, but so that, for the purpose of ascertaining and calculating any rights to benefits under such scheme or fund, service with the existing bank concerned to the appointed date shall be taken into account as if it were service with the designated bank.

(4) The operation of the provisions of subsection (1) or (2) shall not by itself give rise to a claim by any person to any payment or other benefit under any scheme or fund mentioned in subsection (3).

Actions, etc.
not to abate.

8. Where on the appointed date any action, arbitration or proceeding, or any cause of action, arbitration or proceeding, is pending or existing by, against or in favour of any of the existing banks in respect of its Kiribati business, it does not abate and is not discontinued or in any way affected by any provision of this Act but it shall be prosecuted, continued and enforced by, against or in favour of the designated bank as if it had been the original party.

Documents,
etc. to
remain
evidence.

9. Any book, document or other record which, if this Act had not been enacted, would have been evidence in respect of any matter for or against any of the existing banks shall, on and after the appointed date in respect of that bank, be admitted in evidence in respect of the same matter for or against the designated bank as though, for the purposes of the matter in question, the designated bank were the existing bank.

Application of
legislation
relating to
Bankers' Books

10(1) Notwithstanding the transfer of the Kiribati business of the existing banks to the designated bank pursuant to this Act, the provisions of any law relating to bankers' books continue to apply to the books of the existing banks and to entries made in those books before the appointed date in respect of the existing banks.

(2) In this section "books" include ledgers, day books, cash books, account books and all other books and records used in the ordinary business of the existing banks before the appointed date in respect of the existing banks.

Registration
of transfer
of property.

11(1) In the case of any property transferred to the designated bank pursuant to this Act, in respect of the transfer of which any law provides for registration, the proper officer of the appropriate registration authority shall, upon written request made by or on behalf of the designated bank, make such entries in the appropriate register as are required by law to give effect to such transfer and, where appropriate, issue to the designated bank a certificate of title in respect of such property or make the necessary amendments to the register, as the case may be, and make any consequential endorsements on the deeds relating to the title, right or obligation concerned.

(2) Notwithstanding any other law no stamp or other duty and no fee shall be charged or become payable solely on account of any transfer of any property pursuant to this Act on account of anything done under subsection (1).

Certificate.

12. ~~The Minister may, by instrument in writing, certify that a~~ property, liability or instrument specified or described in the certificate is a property, liability or instrument referred to in Section 4, and such a certificate shall be received in all proceedings as prima facie evidence of the matters stated in the certificate.

Reference to
existing banks
in documents.

13(1) Subject to subsection (2), where any enactment other than this Act or any document whenever **made or executed**, contains a reference express or implied to any of the existing banks, that reference shall, on and after the appointed date and except where the context otherwise requires, be read, construed and have effect as a reference to the designated bank.

(2) Subsection (1) does not apply to any reference in any enactment or any document to any of the existing banks relating to **matters other than Kiribati business of the existing bank.**

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 29th May, 1984 and is found by me to be a true and correctly printed copy of the said Bill.



Clerk to the Maneaba
ni Maungatabu

I certify that the above Bill was on the 29th day of May, 1984 passed by the Maneaba ni Maungatabu on a certificate of urgency under section 68(3) of the Constitution.



Speaker

Published by exhibition -

- (a) at the Public Office of the Beretitenti
this 21st day of August 1984



Secretary to the Cabinet

- (b) at the Maneaba ni Maungatabu
this day of 1984.



Clerk to the Maneaba
ni Maungatabu.

BANKING (SPECIAL PROVISIONS) ACT 1984

EXPLANATORY MEMORANDUM

1. The Act provides for the transfer of assets and liabilities from Westpac to the proposed new Bank of Kiribati Ltd.
2. By Section 1 the Act comes into operation on such date as the Minister designates, and by Section 2 the Minister determines the day on which (see section 4) the transfer shall take place.
3. Under Section 3 there is to be a company formed by the name of Bank of Kiribati Ltd. It is that company which is going to carry on the banking business. Westpac Banking Corporation are still to be involved in the carrying on of the business.
4. Section 4 provides that on the day appointed by the Minister the new Bank takes over from Westpac. It further makes detailed provision for the transfer of assets and liabilities etc. to the new Bank.

5. The remaining Sections make further detailed provisions in effect substituting the new Bank for the old in virtually all matters and providing for business to carry on as before but in the name of and by the new Bank.

Michael Neaua Takabwebwe
The Attorney General

LEGAL REPORT

I hereby certify my opinion that none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act.

Michael Neaua Takabwebwe
The Attorney General
4 April 1984