



ANALYSIS

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1992, No. 21

An Act to—

- (a) Provide for the transfer of the undertakings of savings bank companies to their parent banks; and**
- (b) Provide for the dissolution of those companies; and**
- (c) Repeal the Private Savings Banks Act 1983**

[8 April 1992

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

1. Short Title and commencement—(1) This Act may be cited as the Private Savings Banks (Transfer of Undertakings) Act 1992.

(2) Except as provided in section 22 (2) and section 23 (3) of this Act, this Act shall come into force on the date on which it receives the Royal assent.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Appointed day”, in relation to a savings bank company, means the date appointed by the Governor-General under section 4 of this Act for the vesting of the undertaking of the savings bank company in its successor:

“Inland Revenue Acts” means the Acts specified in the First Schedule to the Inland Revenue Department Act 1974:

“Instrument” includes—

(a) Any instrument (other than an enactment) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy thereof were lodged, filed, or registered under any enactment; and

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

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

“Land” has the meaning assigned to it in section 2 of the Land Transfer Act 1952:

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

“Minister” means the Minister of Finance:

“Parent bank”, in relation to a savings bank company, means a parent bank as defined in section 2 of the Private Savings Banks Act 1983:

“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 money:

(b) Goodwill:

(c) 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:

“Reserve Bank” means the Reserve Bank of New Zealand:

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

“Savings bank company” means a company named in the first column of the First Schedule to this Act and, where such a company has been dissolved, means the company as it existed before its dissolution:

“Security” means a mortgage, submortgage, 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 in any case whether upon demand or otherwise, whether present or future and whether actual or contingent, and includes an agreement or undertaking to give or execute whether upon demand or otherwise any of the foregoing:

“Successor”, in relation to a savings bank company, means the body corporate named opposite the name of the savings bank company in the First Schedule to this Act:

“Undertaking”, in relation to a savings bank company, means the property, rights, and liabilities of the company, other than any property or rights that are specified in an Order in Council made under section 4 of this Act in relation to the company as being property or rights to which the order does not apply.

3. Act to bind the Crown—This Act binds the Crown.

4. Transfer of undertakings of savings bank companies to successors—(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Reserve Bank, appoint a date on which the undertaking of a savings bank company named in the order shall vest in its successor and the undertaking of the savings bank company shall, by virtue of this Act, vest in its successor on that date.

(2) The date specified in the Order in Council shall be a date that is not earlier than 4 months nor later than 6 months after the date on which the order is made.

(3) An Order in Council must be made under this section in relation to a savings bank company within 12 months after the date on which this Act comes into force.

(4) An Order in Council under this section may specify property or rights as being property or rights to which the order does not apply.

(5) An Order in Council made under this section may specify that the savings bank company shall be deemed to be dissolved on the appointed day, and, if it does, the savings bank company shall be deemed to be dissolved on that date.

5. Consequential provisions on transfer of undertaking of savings bank company to successor—Without limiting the generality of section 4 of this Act, the following provisions shall apply on and from the appointed day in relation to a savings bank company named in an Order in Council made under that section and in relation to the undertaking of the savings bank company:

- (a) A reference (express or implied) to the savings bank company in any instrument made, given, passed, or executed before the appointed day shall be read and construed as a reference to its successor:
- (b) The relationship between the savings bank company and a customer or depositor shall become the same relationship between its successor and that customer or depositor and the same rights and liabilities, including rights of set-off, shall exist between its successor and a customer or depositor as existed immediately before the appointed day between the savings bank company and that customer or depositor:
- (c) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices, (whether or not in writing), entered into by, made with, given to or by, or addressed to the savings bank company (whether alone or with any other person) before the appointed day and subsisting immediately before the appointed day shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the savings bank company, be binding on and enforceable by, against, or in favour of its successor as fully and effectually in every respect as if, instead of the savings bank company, its successor 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:

- (d) An instruction, order, direction, mandate, or authority given to the savings bank company and subsisting immediately before the appointed day shall be deemed to have been given to its successor:
- (e) A security held by the savings bank company as security for a debt or other liability to the savings bank company incurred before the appointed day shall be available to its successor 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 its successor incurred on or after the appointed day, and, in relation to a security, its successor shall be entitled to all the rights and priorities, however they arise, and shall be subject to all liabilities to which the savings bank company would have been entitled or subject if this Act had not been passed:
- (f) All the rights and liabilities of the savings bank company as bailor or bailee of documents or chattels shall be vested in and assumed by its successor:
- (g) A negotiable instrument or order for payment of money which, before the appointed day is drawn on or given to or accepted or endorsed by the savings bank company or payable at a place of business of the savings bank company, shall, unless the context otherwise requires, 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 its successor instead of the savings bank company or was payable at the place of business of its successor:
- (h) A reference (express or implied) to the holder for the time being of a particular office (other than the office of director, secretary, or auditor) within the savings bank company in any instrument made, given, passed, or executed before the appointed day shall be read and construed as a reference to the person for the time being holding office as the chief executive of its successor or such other officer of its successor as is designated from time to time by the chief executive

or by any other person acting under delegation from the chief executive:

- (i) Any action, arbitration, or proceeding, or cause of action which immediately before the appointed day is pending or existing by, against, or in favour of the savings bank company or to which the savings bank company is a party may be prosecuted, and without amendment of any writ, pleading or other document, continued and enforced by, against, or in favour of its successor.

6. Certain matters not affected by vesting—(1) Nothing effected or authorised by this Act—

- (a) Shall be regarded as placing a savings bank company, its successor, or any other person in breach of, or default under, any contract, or in breach of confidence, or as otherwise making any of them guilty of a civil wrong;
- (b) Shall be regarded as giving rise to a right for any person to—
 - (i) Terminate or cancel or modify a contract or an agreement; or
 - (ii) Enforce or accelerate the performance of an obligation; or
 - (iii) Require the performance of an obligation not otherwise arising for performance;
- (c) Shall be regarded as placing a savings bank company, its successor, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of property or the disclosure of information;
- (d) Shall release a surety from an obligation;
- (e) Shall invalidate or discharge a contract or security.

(2) Without limiting subsection (1) of this section, nothing in section 15 of the Private Savings Banks Act 1983 shall apply, or be taken as ever having applied, in relation to the vesting of the undertaking of a savings bank company in its successor pursuant to this Act.

7. Employees—Notwithstanding any other provision of this Act,—

- (a) On the appointed day in relation to a savings bank company and in relation to the undertaking of that savings bank company, each employee of the savings

bank company shall become an employee of its successor but, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and the period of service with the savings bank company shall be deemed to have been a period of service with its successor:

- (b) The terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of that employee's employment with the savings bank company immediately before the appointed day and be capable of variation in the same manner:
- (c) No such employee shall be entitled to receive any payment or other benefit by reason only of that employee ceasing by virtue of this Act to be an employee of the savings bank company.

8. Superannuation rights of employees—
Notwithstanding any other provision of this Act,—

- (a) Property held on trust or vested in any person under any provident, benefit, superannuation, or retirement fund or scheme for the employees of a savings bank company named in an Order in Council made under section 4 of this Act who are employed in connection with the undertaking of the company or their dependants or other persons and held or vested immediately before the appointed day in relation to that savings bank company shall, on and after the appointed day, be deemed to be held on trust or vested in that person for those employees in their capacity as employees of its successor or their dependants or other persons on the same terms and conditions:
- (b) So far as necessary every reference in any instrument constituting that fund or scheme to the savings bank company or an employee of the savings bank company or a dependant of that employee or any other person shall be read and construed as a reference to its successor or an employee of that successor, or a dependant of that employee or any other person, as the case may be:

- (c) Any superannuation scheme relating to employees of a savings bank company that was, immediately before the appointed day in relation to that savings bank company, an approved superannuation scheme within the meaning of the Superannuation Schemes Act 1989 shall continue to be an approved superannuation scheme on and after the appointed day.

9. Books and documents to remain evidence—(1) Any document, matter, or thing which, if this Act had not been passed, would have been admissible in evidence in respect of any matter relating to the undertaking of a savings bank company named in an Order in Council made under section 4 of this Act, for or against that savings bank company shall, on and after the appointed day in relation to that savings bank company, be admissible in evidence in respect of the same matter for or against its successor.

(2) In this section, “document” has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980.

10. Registers—(1) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the foregoing provisions of this Act to change the name of a savings bank company to that of its successor in those books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, by a savings bank company’s successor—

- (a) Executed or purporting to be executed by the successor; and
- (b) Relating to any property held immediately before the appointed day in relation to the savings bank company by that savings bank company; and
- (c) Containing a recital that that property has become vested in the savings bank company’s successor by virtue of the provisions of this Act—

shall, in the absence of evidence to the contrary, be sufficient proof that the property is vested in the successor.

11. 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) On and from the appointed day in relation to a savings bank company, the company and its successor shall, in respect of the undertaking of the savings bank company, be deemed to be the same person; and
- (b) In respect of the liability for and the assessment, determination, or imposition of taxes, duties, levies, or other charges accruing on and from the appointed day, all transactions entered into by, and acts of, the savings bank company shall, in so far as they relate to the undertaking of the savings bank company, be deemed to have been entered into by, or to be those of, its successor and to have been entered into or performed by its successor at the time when they were entered into or performed by the savings bank company.

12. Private Savings Banks Act 1983 to cease to apply—
The Private Savings Banks Act 1983 and all regulations made under that Act shall cease to apply to a savings bank company named in an Order in Council made under section 4 of this Act on and from the appointed day.

13. Use of words “bank”, “banker”, and “banking”—
Nothing in section 65 (2) of the Reserve Bank of New Zealand Act 1989 shall apply to a company to which the Private Savings Banks Act 1983 has ceased to apply.

14. Termination of guarantee of depositors—
Notwithstanding section 5 of this Act, on the appointed day in relation to a savings bank company named in an Order in Council made under section 4 of this Act, the instrument of guarantee executed by that savings bank company and its parent bank pursuant to section 13 of the Private Savings Banks Act 1983 shall cease to have any force or effect.

15. Notice to depositors—(1) Not later than 21 days after the date on which an Order in Council is made under section 4 of this Act in relation to a savings bank company, the parent bank of that company shall—

- (a) Give written notice of the matters set out in subsection (2) of this section to every depositor of the company; and

- (b) Give public notice of the matters set out in subsection (3) of this section in a principal metropolitan daily newspaper circulating in each of Auckland, Wellington, Christchurch, and Dunedin.
- (2) The notice given under subsection (1) (a) of this section must state—
- (a) That, by virtue of this Act, the undertaking of the savings bank company is to vest in the savings bank company's successor on the date (which must also be stated) specified in the Order in Council made under section 4 of this Act:
 - (b) That, by virtue of this Act, all deposits with the savings bank company will, on that date, become deposits with the savings bank company's successor:
 - (c) That the guarantee of those deposits by the parent bank will cease on that date:
 - (d) That the depositor has the right to withdraw the amount standing to the credit of his or her account as a depositor as from the date of the notice at any time before the appointed day and, except in the case of a penalty imposed by or under any Act relating to the deposit, to do so without penalty.
- (3) The notice given under subsection (1) (b) of this section must state—
- (a) That, by virtue of this Act, the undertaking of the savings bank company is to vest in the savings bank company's successor on the date (which must also be stated) specified in the Order in Council made under section 4 of this Act:
 - (b) That, by virtue of this Act, all deposits with the savings bank company will, on that date, become deposits with the savings bank company's successor:
 - (c) That the guarantee by the parent bank of deposits with the savings bank company will cease on that date:
 - (d) That every person who is a depositor at the date on which notices under subsection (1) (a) of this section are sent to all depositors has the right to withdraw the amount standing to the credit of his or her account as a depositor as from the date of such notices at any time before the appointed day and, except in the case of any penalty imposed by or under any other Act relating to the deposit, to do so without penalty.
- (4) Every notice to a depositor under subsection (1) (a) of this section shall be sent to the depositor's last known address.

(5) A failure to comply with this section does not affect the validity of an Order in Council made under section 4 of this Act.

16. Repayment of deposits—A savings bank company in respect of which an Order in Council has been made under section 4 of this Act shall, on receipt of a request in writing from a depositor, being a person who was a depositor as at the date on which notices under section 15 (1) (a) of this Act were sent to all depositors, repay the amount standing to the credit of the account of the depositor together with any interest accrued due, and, except in the case of a penalty imposed by or under any other Act relating to the deposit, shall do so without penalty.

17. Restrictions on taking deposits—No savings bank company in relation to which an Order in Council has been made under section 4 of this Act shall accept a deposit from any person who was not at the time when the order was made a depositor unless, before the deposit is made, notice is given, either in writing or orally, to the person stating—

- (a) That, by virtue of this Act, the undertaking of the savings bank company will vest in the savings bank company's successor on the date (which must be stated) specified in the order:
- (b) That, by virtue of this Act, all deposits with the savings bank company will, on that date, become deposits with the savings bank company's successor:
- (c) That the guarantee of those deposits by the parent bank will cease on that date.

18. Continued application of regulations to accounts of minors—The provisions of the Private Savings Banks Regulations 1984 expressly relating to the operation of accounts by or on behalf of minors shall, notwithstanding the revocation of those regulations, apply, with such modifications as may be necessary, in relation to the accounts of minors in a savings bank company that are, pursuant to this Act, vested in that company's successor.

19. Nominations—Nominations made under Part V of the Private Savings Banks Regulations 1984 shall, notwithstanding the revocation of those regulations, continue in force in relation to accounts in a savings bank company that are, pursuant to

this Act, vested in that company's successor and that Part of, and the First Schedule to, those regulations shall continue to apply in relation to those nominations and accounts as if—

- (a) Every reference in that Part and that Schedule to a depositor was a reference to a depositor of that successor; and
- (b) Every reference to a company, a savings bank, and a private savings bank, was a reference to that successor.

20. References to private savings banks in other Acts—References in any other Act to a private savings bank or to a savings bank company shall be deemed to be references to a savings bank company's successor.

21. Application of Unclaimed Money Act 1971—For the purposes of section 4 (1) of the Unclaimed Money Act 1971, money of the kind referred to in paragraph (a) or paragraph (b) or paragraph (c) (i) of that subsection deposited with a savings bank company that, by virtue of this Act, becomes money deposited with that savings bank company's successor, shall be deemed to have been deposited with that savings bank company's successor when it was deposited with the savings bank company.

22. Amendments to other Acts—(1) The enactments specified in the Second Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(2) Subsection (1) of this section shall come into force on a date to be appointed by the Governor-General by Order in Council.

(3) No Order in Council shall be made under subsection (2) of this section until the undertaking of every savings bank company has vested in its successor pursuant to this Act.

23. Repeal of Private Savings Banks Act 1983—(1) The Private Savings Banks Act 1983 is hereby repealed.

(2) The regulations and order specified in the Third Schedule to this Act are hereby revoked.

(3) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

(4) No Order in Council shall be made under this section until the undertaking of every savings bank company has vested in its successor pursuant to this Act.

24. Special provisions relating to ownership accounts with private savings banks—(1) Every savings bank company's successor shall, on and after the appointed day, be 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) Every Ordinary Farm Ownership Account and Special Farm Ownership Account (within the meaning of section 2 (1) of the Farm Ownership Savings Act 1974) subsisting with a savings bank company immediately before the appointed day shall, on and after the appointed day, be deemed to be an Ordinary Farm Ownership Account or Special Farm Ownership Account, as the case may be, with the savings bank company's successor and the provisions of that Act (including sections 12 and 14c) shall apply accordingly with such modifications as may be necessary.

(3) Every Ordinary Home Ownership Account and Special Home Ownership Account (within the meaning of section 2 (1) of the Home Ownership Savings Act 1974), subsisting with a savings bank company immediately before the appointed day shall, on and after the appointed day, be deemed to be an Ordinary Home Ownership Account or Special Home Ownership Account, as the case may be, with that savings bank company's successor and the provisions of that Act (including sections 12 and 14c) shall apply accordingly with such modifications as may be necessary.

(4) Every Fishing Vessel Ownership Account and Special Fishing Vessel Ownership Account (within the meaning of section 2 (1) of the Fishing Vessel Ownership Savings Act 1977) subsisting with a savings bank company immediately before the appointed day shall, on and after the appointed day, be deemed to be a Fishing Vessel Ownership Account or Special Fishing Vessel Ownership Account, as the case may be, with that savings bank company's successor, and the provisions of that Act (including sections 12 and 17) shall apply accordingly with such modifications as may be necessary.

SCHEDULES

Section 2

FIRST SCHEDULE**SAVINGS BANK COMPANIES' SUCCESSORS**

Savings Bank Company	Successor
ANZ Savings Bank Limited	ANZ Banking Group (New Zealand) Limited
Bank of New Zealand Savings Bank Limited	Bank of New Zealand
The National Bank of New Zealand Savings Bank Limited	The National Bank of New Zealand Limited
Westpac Savings Bank-NZ-Limited	Westpac Banking Corporation.

SECOND SCHEDULE
ENACTMENTS AMENDED

Section 22 (1)

Title	Amendment
1969, No. 52—The Administration Act 1969 (R.S. Vol. 19, p. 1)	By repealing the definition of the term “bank” in section 65 (1), and substituting the following definition: “ ‘Bank’ means a bank within the meaning of the Banking Act 1982; and includes the Reserve Bank of New Zealand and Post Office Bank Limited:”.
1971, No. 28—The Unclaimed Money Act 1971 (R.S. Vol. 21, p. 831)	By repealing the definition of the term “savings bank” in section 2, and substituting the following definition: “ ‘Savings bank’ means— “(a) Post Office Bank Limited; “(b) A trustee bank’s successor company in respect of any money vested in it by virtue of the Trustee Banks Restructuring Act 1988: “(c) A savings bank company’s successor in respect of any money vested in it by virtue of the Private Savings Banks (Transfer of Undertakings) Act 1992: “(d) A building society within the meaning of the Building Societies Act 1965 in respect of any money that was a savings bank deposit within the meaning of section 57 of the Building Societies Act 1965 as in force before the commencement of the Building Societies Amendment Act 1987:”.
1974, No. 45—The Farm Ownership Savings Act 1974 (Reprinted 1976, Vol. 5, p. 3685)	By repealing paragraph (d) of the definition of the term “authorised savings institution” in section 2 (1) (as added by section 2 (1) of the Farm Ownership Savings Amendment Act 1980).
1974, No. 51—The Home Ownership Savings Act 1974 (Reprinted 1976, Vol. 5, p. 3893)	By repealing paragraph (d) of the definition of the term “authorised savings institution” in section 2 (1) (as added by section 2 (1) (a) of the Home Ownership Savings Amendment Act 1981).

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title	Amendment
1977, No. 62—The Fishing Vessel Ownership Savings Act 1977	By repealing paragraph (d) of the definition of the term “authorised savings institution” in section 2 (1) (as added by section 2 of the Fishing Vessel Ownership Savings Amendment Act 1980).
1978, No. 103—The Securities Act 1978 (R.S. Vol. 15, p. 533)	By repealing section 5 (2) (as substituted by section 181 of the Reserve Bank of New Zealand Act 1989).
1982, No. 123—The Law Practitioners Act 1982	By repealing the definition of the term “bank” in section 2, and substituting the following definition: “‘Bank’ has the same meaning as in the Banking Act 1982; and includes Post Office Bank Limited.”
1987, No. 114—The Post Office Bank Act 1987	By repealing section 6, and substituting the following section: “6. Nominations —(1) Notwithstanding the revocation of the Private Savings Banks Regulations 1984, nominations made in respect of money deposited with the Bank in accordance with this subsection (as in force before its repeal by section 22 of the Private Savings Banks (Transfer of Undertakings) Act 1992) shall continue in force as if those regulations had not been revoked. “(2) Notwithstanding the revocation of Part I of the Post Office Savings Banks Regulations 1985, nominations made under that Part shall continue in force as if that Part had not been revoked and as if the Post Office Savings Bank and the Postmaster-General were the Bank.”

THIRD SCHEDULE
ORDER AND REGULATIONS REVOKED

Section 23 (2)

Title	Statutory Regulations Serial Number
The Private Savings Banks (Commencement of Business) Order 1964	1964/162
The Private Savings Banks Regulations 1984	1984/51
The Private Savings Banks Regulations 1984, Amendment No. 1	1984/215
The Private Savings Banks Regulations 1984, Amendment No. 2	1987/172

This Act is administered in the Reserve Bank of New Zealand.
