

GOVERNMENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI  
DECREE NO. 21

AUSTRALIA AND NEW ZEALAND BANKING GROUP DECREE 1991

ARRANGEMENT OF SECTIONS

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A DECREE TO PROVIDE FOR THE TRANSFER TO AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED OF THE FIJI UNDERTAKING OF BANK OF NEW ZEALAND AND FOR OTHER PURPOSES INCIDENTAL THERETO AND CONSEQUENTIAL THEREON

In exercise of the powers vested in me as President of the Sovereign Democratic Republic of Fiji and Commander-in-Chief of the Armed Forces and acting in accordance with the advice of the Prime Minister and the Cabinet, I hereby make the following Decree:

*Short Title*

1. This Decree may be cited as the Australia and New Zealand Banking Group Decree 1991.

*Commencement and Operation*

- 2. This Decree shall be deemed to have come into force on the appointed time.

*Interpretation*

- 3.—(1) In this Decree, except insofar as the context or subject matter otherwise indicates or requires:

- "appointed time" means 11.00 a.m. Fiji standard time on 30 March 1990;
- "ANZ" means Australia and New Zealand Banking Group Limited;
- "BNZ" means the Bank of New Zealand
- "the business" means all the banking business of the BNZ in or conducted from Fiji immediately prior to the appointed time;
- "customer" shall include any person, proprietary unit, board, commission, committee, instrumentality or government with whom the BNZ conducted a banking or other business relationship immediately prior to the appointed time;
- "land" includes any estate, interest or right (whether legal or equitable) in, over or under land;
- "liabilities" means duties and obligations of every description;
- "function" includes power, authority and duty;
- "property" means property as defined in Section 2 of the Interpretation Act Cap 7 as amended and assets of every description of the BNZ used or held in connection with or in relation to the business and includes such security, rights and powers of every description, vested in or exercisable by the BNZ;

"Registrar" shall mean unless the context otherwise decides the person holding the office pursuant to any Act or Decree or By-Laws or Regulations of the Republic of Fiji wherein the term is contained and defined:

"security" means a mortgage (whether legal or equitable), charge, debenture, bill of exchange, bills of sale, promissory note, guarantee, lien, deeds, pledge or other means of securing the payment of a debt, whether present or future or the discharge of an obligation or liability, whether actual or contingent, and all such instruments created by and brought into existence by BNZ prior to the appointed time evidencing the same:

"undertaking" means the business and all the property wherever situate immediately prior to the appointed time:

(2) Subject to the provisions of this section, where:

- (a) any enactment other than an enactment in this Decree; or
- (b) any document whensoever made or executed:

contains any reference express or implied to the BNZ such reference shall, on and after the appointed time and except where the context otherwise requires, be read, construed and have effect as if it were a reference to the ANZ.

(3) Notwithstanding anything in the preceding subsection where in pursuance thereof a reference to the BNZ in any document constituting or relating to any pension scheme, provident fund or officers' guarantee fund of the BNZ in force immediately prior to the appointed time is to be read, construed and have effect as a reference to the ANZ, for the purpose of ascertaining and calculating the right to benefit thereunder, service or employment with the BNZ prior to the appointed time shall be taken into account as if it were service or employment with the ANZ, but the coming into force of this section shall not of itself give rise to any claim to benefit under any such scheme or fund or operate to cause a person to become a member of another pension scheme, provident fund or officers' guarantee fund.

(4) Without prejudice to the generality of subsection (2) of this section, where by any order of the Court or by any trust deed, settlement, covenant or agreement or where by any will whether made or executed prior to, on or after the appointed time, the BNZ (whether alone or with any person) was or is granted letters of administration or appointed trustee, executor, guardian or in any other fiduciary capacity, such order, trust deed, settlement, covenant, agreement or will shall not fail by reason of anything in this Decree but shall as from the appointed time be read and construed and have effect as if, for any reference therein to the BNZ, there was substituted a reference to the ANZ.

(5) For the avoidance of doubt, this Decree shall operate with respect to:

- (a) all persons, proprietary units, boards, commissions, committees, instrumentalities or governments:
  - (i) resident or domiciled within Fiji;
  - (ii) who have carried on business within Fiji;
  - (iii) who were customers of the BNZ;
  - (iv) who are bound by contract express or implied to have the whole or part of their rights and obligations performed enforced or determined according to the Laws of Fiji; or,
  - (v) who are otherwise subject to the jurisdiction of the Courts of Fiji;
- (b) all property moveable or immovable situate in Fiji or in respect of whose owner this Decree operates pursuant to subsection 5(a).

(6) Without limiting or prejudicing the generality of any other provisions of this Decree any act or omission by the BNZ since the appointed time in relation to:

- (a) any customer of the business;
- (b) the property;
- (c) the undertaking, or
- (d) any security;

shall on and after the appointed time be deemed to be an act or omission of the ANZ as the case may be, provided always that this provision shall not affect or otherwise modify the position *inter se* of the ANZ and the BNZ.

*Vesting of BNZ undertaking in ANZ*

4. On the appointed time the undertaking of the BNZ in Fiji shall be deemed by virtue of this Decree to have been divested from the BNZ and vested in the ANZ absolutely.

*Transfer of Contracts etc.*

5.—(1) All property, security, contracts, agreements, conveyances, deeds, leases, licences and other instruments or undertakings entered into by or made with or addressed to the BNZ (whether alone or with any other person) in force at any time prior to the appointed time shall on and after that time to the extent that they were at any time before that time binding upon enforceable by or against the BNZ, be deemed to be binding and of full force and effect in every respect in favour of or against the ANZ as fully and effectually as if, instead of the BNZ, the ANZ had been a party thereto or bound thereby or entitled to the benefit thereof.

(2) All documents or instruments brought into existence for the purpose of evidencing, recording or effecting the matters referred to in subsection (1) shall be exempt from stamp duty under the Stamp Duties Act Cap. 205 as amended. Without limiting the generality of the foregoing, the Stamp Duties Act shall not:

- (a) apply to any agreement brought into existence for the purpose of recording, evidencing or effecting any transfer of property of the BNZ to the ANZ or the vesting of any such property in the ANZ;
- (b) apply to any instrument recording evidencing or effecting anything which is the subject of this Decree; or
- (c) operate to impose or attract any duty fine impost penalty or assessment required or reasonably necessary to give effect to the purpose and intent of this Decree.

(3) Without limiting the generality of any other provision of this Decree nothing in the State Acquisition of Lands Act, State Lands Act, Forest Act, Land Sales Act, Land Transfer Act, Native Lands Act, Native Land Trust Act, and any other Statute or Decree, By-Law or Regulation amending or made thereunder shall invalidate or affect any mortgage or transfer, bills of sale or security given or made to the BNZ and to which the ANZ has by virtue of this Decree become entitled to in the place of the BNZ.

(4) Nothing in any Act, Decree, By-Law or Regulation shall affect any security or transfer given or made to the BNZ to secure any loan or interest thereon or any remedy for the enforcement thereof. Any such mortgage or transfer or security may be given or made, and any sale or foreclosure may be effected thereunder, notwithstanding that the land or chattels the subject of the mortgage, transfer or security or any part thereof could not by the terms of any Act, Decree, By-Law or Regulation be transferred, assigned or otherwise dealt with.

(5) No further consent, permit, certification, ratification, fees or charges, registration fees of any kind, filing fees, lodgement fees, or fees of any kind whatsoever shall be required to be given or paid in respect of any document or instrument sought to be registered for the purpose of evidencing, recording or effecting the matters referred to in subsections (1) and (2) notwithstanding any provision to the contrary in any Act, Decree, By-Law or Regulation.

(6) The exercise by the ANZ of any power of sale, re-entry or seizure or otherwise under any security vested in the ANZ by virtue of this Decree shall be valid and effective at law and in equity notwithstanding any non-compliance with any Act, Decree, By-Law or Regulation.

(7) The powers and remedies conferred upon the ANZ by the operation of this Decree shall not be limited or restricted in any way by the provisions of or non-compliance with any Act, Decree, Regulation or By-Law.

*Transfer of Business*

6. Without prejudice to the generality of the foregoing provisions of this Decree, the following provisions shall have effect with relation to the business of BNZ:

- (a) the relationship between the BNZ and a customer at any office or branch of the BNZ shall on and after the appointed time be between the ANZ and such customer and shall give rise to the same rights and the same duties (including rights of set-off) as would have existed prior to that time as if such relationship had been between the ANZ and the customer, and so that any instruction, order, direction, mandate or authority given by such customer to the BNZ and subsisting at or given after the appointed time shall, unless and until revoked or cancelled, be deemed to have been given to the ANZ;
- (b) any security held by the BNZ as security for the payment of debts or liabilities (whether present or future, actual or contingent) of any person shall be transferred or deemed to be transferred to the ANZ on the appointed time and shall be held by and be available to the ANZ as security for the payment of such debts and liabilities to the ANZ; and where the said security extends to future advances or to future liabilities of such person, the security shall as on and after that time be held by and be available to the ANZ as security for future advances to the said person by, and future liabilities of the said person to, the ANZ to the same extent to which future advances by, or liabilities to, the BNZ were secured thereby at any time prior to that time;

- (c) the ANZ shall, in relation to any security transferred or deemed to have been transferred to it in accordance with or by virtue of the provisions of this Decree and the moneys thereby secured, be entitled to the same rights and priorities and subject to the same obligations and incidents as the BNZ would have been entitled and subject to if the same had continued to be held by the BNZ;
- (d) the custody of any document, goods or thing held by the BNZ as bailee for any other person at any office or branch of the BNZ shall be transferred or deemed to be transferred to the ANZ on the appointed time and the rights and obligations of the BNZ under any contract of bailment relating to such document, goods or thing shall be transferred or deemed to be transferred at that time to the ANZ;
- (e) any negotiable instrument or order for payment of money whether drawn, given, accepted or endorsed prior to, on, or after the appointed time, which is expressed to be drawn on, or given to, or accepted or endorsed by, the BNZ, or payable at any place of business of the BNZ shall have the same effect on and after the appointed time as if it had been drawn on, or given to, or accepted or endorsed by, or payable at the same place of business of the ANZ;
- (f) nothing in or about the operation of this Decree shall disturb the priority prior to the appointed time of any security or other right relative to those held by any third party other than the BNZ and the ANZ;
- (g) notwithstanding the operation of this Decree all advances and payments made by the ANZ to or for the benefit of former depositors or customers of the BNZ shall be deemed to be lawfully made and may be charged to the account of any such depositor or customer;
- (h) nothing in this Decree shall in any way affect or alter the respective rights and obligations of any party other than in respect of the business as herein defined.

*Actions etc not to abate*

7. Any action, arbitration or proceeding and any cause of action, arbitration or proceeding which shall at the appointed time be pending or existing by, against, or in favour of the BNZ shall not abate or be discontinued or be in any way prejudicially affected by reason of the provisions of this Decree, but the same may be prosecuted, continued and enforced by, against or in favour of the ANZ as and when it might have been prosecuted, continued and enforced by, against or in favour of the BNZ if this Decree had not been made.

*Evidence Act*

8.—(1) Any book or other document which if this Decree had not been made, would have been evidence in respect of any matter for or against the BNZ shall, on and after the appointed time, be admitted in evidence in respect of the same matter for or against the ANZ.

(2) In this section "document" has the same meaning as in section 2 subsection (1) of the Evidence Act, Cap. 41 as amended.

*Bankers Books Evidence Act*

9.—(1) Notwithstanding the transfer of the business to the ANZ under and in terms of this Decree, the provisions of the Bankers' Books Evidence Act shall continue to apply with respect to the books of the BNZ which are transferred to the ANZ by virtue of this Decree and to entries made in such books prior to the appointed time.

(2) In this section, "books" include ledgers, day books, cash books, account books, microfiche, computer disks, software programmes and such other electronic and magnetic records and retrieval systems compiled by BNZ and all other books and records used in the business.

*Land Titles*

10.—(1) The Registrar of Titles is hereby directed upon application and lodgement for registration made to him by the ANZ to make all such entries upon any grant or certificate of title or mortgage or lease or other instrument or document under his control or custody as may be necessary or expedient in consequence of the transfer of any property under this Decree and the holder of any such grant, certificate of title, or mortgage or lease or other instrument or document shall produce the same to the Registrar of Titles for that purpose.

(2) The Registrar of Titles is hereby directed upon application and lodgement for registration made to him by ANZ, to make such other memorials or entries in any public record as may be necessary or expedient to record the transfer of property to the ANZ under this Decree.

(3) This Decree shall operate to the exclusion of the provisions of all or any legislation relating to or affecting the transfer of property, land titles or securities which shall be deemed subordinate to this Decree and to the extent of any conflict, the provisions of this Decree shall prevail.

*Companies*

11.—(1) The Registrar of Companies is hereby authorised and directed, upon application made to him by the ANZ, to make all such entries upon or in relation to any security and the register of charges under the Companies Act, as may be necessary or expedient to record the transfer of property to the ANZ under this Decree.

(2) The provisions of this Decree shall operate to the exclusion of the provisions of all or any legislation relating to or affecting companies which shall be deemed subordinate to this Decree and to the extent of any conflict, the provisions of this Decree shall prevail.

*Deeds etc.*

12. All other Registrars as defined in Section 3 but excluding those referred to in Sections 10 and 11 are hereby directed and authorised to act to like effect as required by the Registrar of Titles under Section 10 upon application by the ANZ for the making of entries or records with respect to any property or security in any public record under the control or direction of any such Registrar.

*Entry by ANZ into possession etc.*

13.—(1) The entry of the ANZ upon, or the use, enjoyment or occupation by the ANZ, of any land which prior to the appointed time was used enjoyed or occupied by the BNZ as tenant, subtenant or licensee shall not constitute an assignment, transfer, underletting, devolution, parting with possession or other disposition of that land for the purpose of any provision relating to assignment, transfer, underletting, devolution, parting with possession or other disposition contained in any instrument in existence at the appointed time and relating to that land.

(2) No transfer or vesting effected by virtue of this Decree shall invalidate, discharge or otherwise render unenforceable any contract or security.

*Regulations*

14. The Attorney-General may make regulations for the purpose of giving better effect to the purposes and provisions of this Decree.

*Costs, Charges and Expenses*

15. Notwithstanding the provisions of Section 5(2) of this Decree all the costs, charges and expenses preliminary to and of and incidental to the preparing, applying for, obtaining and passing of this Decree or otherwise in relation thereto shall be paid by the ANZ.

Made this 31st day of May 1991.

PENAIA K. GANILAU  
President of the Sovereign Democratic  
Republic of Fiji and Commander-in-Chief  
of the Armed Forces