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FIJI**ACT NO. 14 OF 1996**

I assent.

[L.S.]

K. K. T. MARA
President

[28 August 1996]

AN ACT

TO PROVIDE FOR THE RESTRUCTURING OF THE NATIONAL BANK OF FIJI
AND, IN PARTICULAR, TO PROVIDE FOR—

- (A) THE CONTINUATION OF THE BANK AS A BANK OFFERING PERSONAL BANKING SERVICES;
- (B) THE ESTABLISHMENT OF AN NBF ASSET MANAGEMENT BANK WHOSE FUNCTION IS TO DISPOSE OF, OVER AN APPROPRIATE PERIOD OF TIME, ALL ASSETS AND LIABILITIES TRANSFERRED TO IT UNDER THIS ACT;
- (C) THE TRANSFER INTO THE NBF ASSET MANAGEMENT BANK OF ALL ASSETS AND LIABILITIES OF THE NATIONAL BANK OF FIJI OTHER THAN THOSE APPROPRIATE FOR A PERSONAL BANK;
- (D) AN ASSESSMENT IN 1998 OF THE COMMERCIAL VIABILITY OF THE NATIONAL BANK OF FIJI AND, IF THEN APPROPRIATE, THE REGISTRATION UNDER THE COMPANIES ACT OF A COMPANY OWNED BY THE STATE, AND THE TRANSFER OF THE BANK'S UNDERTAKING TO THE COMPANY;

- (E) THE REPORTING AND OTHER ACCOUNTABILITY REQUIREMENTS OF THE NATIONAL BANK OF FIJI, THE NBF ASSET MANAGEMENT BANK AND THE COMPANY;
- (F) THE CONTINUATION OF THE STATE'S GUARANTEE OF ALL DEPOSITS WITH THE NATIONAL BANK OF FIJI, THE PROVISION OF AN EQUIVALENT GUARANTEE IN RESPECT OF DEPOSITS WITH THE NBF ASSET MANAGEMENT BANK, AND THE PERFORMANCE OF THE STATE'S OBLIGATIONS UNDER THE LATTER GUARANTEE.

ENACTED by the Parliament of Fiji —

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Act may be cited as the National Bank of Fiji Restructuring Act, 1996.
- (2) Subject to subsection (3), this Act shall come into force on the day after the date on which it is assented to by the President.
- (3) Sections 5 and 72(3) shall be deemed to have come into force on the 1st day of July 1996.

Definitions and interpretation

- 2.—(1) In this Act, unless the context otherwise requires—
- “Act” includes regulations and other subsidiary legislation made under this Act;
- “AMB” means the NBF Asset Management Bank established by this Act;
- “assets” 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, 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;
- “Bank” means the National Bank of Fiji, as continued in existence by the National Bank of Fiji Act (Cap.213) and by this Act;
- “Board” means, as the context requires, the board of directors of the Bank, the board of directors of AMB, or the board of directors of the Company;
- “Chief Manager” means, as the context requires, the Chief Manager of the Bank or the Chief Manager of AMB;
- “Company” means the company, if any, formed and registered under section 34;
- “consultation” has the meaning set out in subsection (2);
- “corporate plan”, in relation to the Bank, AMB or the Company, means its current corporate plan under Part 6;

“corporatisation day” means the day specified as such by regulations;

“director” means a member of the Board concerned;

“dissolution day” means the 1st day of July 1998 or such later day (not being later than the 31st day of December 1998) as is specified as such by regulations.

“employee” includes any person who is engaged to work, or works, under a contract of service or apprenticeship or a contract for services; and “employment” has a corresponding meaning;

“Gazette” means the *Fiji Republic Gazette* published by the order of the Government of Fiji and includes supplements thereto and any extraordinary Gazette as published;

“government company” means—

(a) a company formed and registered under the Companies Act (Cap. 247), or an existing company within the meaning of that Act, all of the stock or shares in the capital of which is beneficially owned by the State, whether such shares are held in the name of a Minister, public officer, a nominee of the State or otherwise; or

(b) a subsidiary of any such company, all of the stock or shares in the capital of which is beneficially owned by the company;

“government entity” means—

(a) the Bank or AMB; or

(b) any government company, statutory authority (other than the Reserve Bank) or ministry or department of government that is declared by resolution of the House of Representatives to be a government entity for the purposes of this Act;

“instrument” includes—

(a) any instrument (other than this Act) 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;

“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 Fiji or elsewhere);

“Minister” and “Minister of Finance” means the Minister to whom responsibility for finance is for the time being assigned;

“principal restructuring plan” means the restructuring plan prepared for the purposes of section 6(1) and approved under section 9;

“regulations” means regulations made under this Act;

“relevant Minister” means the Minister whom the Prime Minister has designated as the relevant Minister for the Company, who shall not be the Minister to whom responsibility for finance is for the time being assigned;

“Reserve Bank” means the Reserve Bank of Fiji established under section 3 of the Reserve Bank of Fiji Act (Cap. 210);

“restructuring plan” means a restructuring plan approved by the Minister under section 9, and includes the principal restructuring plan;

“restructuring day” means the 1st day of July 1996;

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

“security” means a mortgage, submortgage or charge (whether legal or equitable) debenture, bill of exchange, bill of sale, promissory note, guarantee, indemnity, defeasance, hypothecation, 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;

“sitting day” means a sitting day of the House of Representatives or the Senate, as the case may be;

“statement of corporate intent”, in relation to the Bank, AMB or the Company, means its current statement of corporate intent under Part 6;

“statutory authority” means a body corporate incorporated by or under any Act (excluding any company registered under the Companies Act (Cap. 247));

“subsidiary” has the meaning given to it by section 156 of the Companies Act (Cap. 247) and includes any entity that is declared by regulation to be a subsidiary of the Bank, AMB, or the Company for the purposes of this Act;

“tax” includes any tax, fee, duty, levy or charge;

“undertaking”, in relation to AMB or the Bank, means all the assets and liabilities of AMB or the Bank, and includes the employees of AMB or the Bank as the case may be.

(2) If a provision of this Act requires that the Minister consult with, or act only after consultation with, another person, the Minister must—

- (a) advise the person of the matter concerned; and
- (b) seek the views of the person on the matter; and
- (c) take into account such views as are provided by the person within a reasonable time (not exceeding one month)—

but the Minister is not required to act in accordance with the views of the person and must exercise his own deliberate judgement.

(3) Where an approval, authorization or exemption of or by any person is required or permitted by this Act and, in any particular case, is obtained, the person obtaining the approval authorization or exemption shall comply with any conditions of the approval, authorization or exemption imposed by the person giving it.

Act binds State

3. This Act binds the State.

Extraterritorial operation

4. This Act shall apply, as far as possible, to —
- (a) land and things outside Fiji; and
 - (b) acts, transactions and things done, entered into or happening outside Fiji; and
 - (c) land, things, acts and transactions (wherever situated, done, entered into or happening) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction.

PART 2—RESTRUCTURING OF BANK

Division of Bank into two bodies

5. With effect from the commencement of the restructuring day there shall be —
- (a) a National Bank of Fiji continued in existence under section 13; and
 - (b) an NBF Asset Management Bank established under section 24.

Principal restructuring plan to be prepared

6.—(1) The Minister shall cause to be prepared and submitted to him, within 14 days of the day on which this Act is assented to by the President, a draft restructuring plan for the Bank.

- (2) The draft restructuring plan prepared for the purposes of subsection (1) shall—
- (a) contain a description of each asset and liability of the Bank that is to remain with the Bank on and after the restructuring day, either individually or as a group or class, or, in respect of any such asset or liability, identify a means by which, or a document in which, the asset or liability is so described; and
 - (b) except in the case of assets of which the Bank is not the beneficial owner, state the value (which shall be the book value as at immediately before the restructuring day) attributed for the purposes of the restructuring to each asset and liability to remain with the Bank on and after the restructuring day, either individually or as a group or class; and
 - (c) state any authorities that are to remain with the Bank on and after the restructuring day; and
 - (d) identify the employees of the Bank that are to remain with the Bank on and after the restructuring day; and
 - (e) state, for the purposes of section 18(a), the amount of the capital of the Bank on the restructuring day (including any amount specified in the restructuring plan under paragraph (f) of this subsection); and
 - (f) specify the amount of capital, if any, that shall be paid by the State to the Bank within 7 days of the approval of the restructuring plan; and
 - (g) specify the amount of capital, if any, that is additional to the amount referred to in paragraph (f) of this subsection and shall be paid by the State to the Bank at a time or times fixed by the Board with the written approval of the Minister; and
 - (h) contain such other provisions as the Minister thinks fit.

Additional restructuring plans may be prepared

7.—(1) The Minister may at any time or times cause to be prepared and submitted to him one or more draft restructuring plans for the Bank or AMB, which shall be additional to the principal restructuring plan.

(2) Any draft restructuring plan prepared for the purposes of subsection (1) shall state the day (and, if considered appropriate, the time) upon which the plan is to take effect, which day or time may be before or after the day on which the plan is approved by the Minister under section 9.

(3) Any draft restructuring plan prepared for the purposes of subsection (1) may—

(a) state the names of one or more government entities (which may be or include the Bank or AMB)

(i) some of whose assets or liabilities, or both, are to be vested in the Bank or AMB; or

(ii) in whom some of the assets or liabilities, or both, of the Bank or AMB are to be vested; and

(b) contain a description of each asset and liability of a government entity to be vested in the Bank or AMB, either individually or as a group or class, or, in respect of any such asset or liability, identify a means by which, or a document in which, the asset or liability is so described; and

(c) contain a description of each asset and liability of the Bank or AMB to be vested in a government entity, either individually or as a group or class, or, in respect of any such asset or liability, identify a means by which, or a document in which, the asset or liability is so described; and

(d) in respect of each asset or liability that is to be vested in the Bank or AMB, state the asset or liability that is to be vested in the government entity in consideration for the vesting of the asset or liability in the Bank or AMB; and

(e) in respect of each asset or liability that is to be vested in the government entity, state the asset or liability that is to be vested in the Bank or AMB in consideration for the vesting of the asset or liability in the government entity; and

(f) contain such other provisions as the Minister thinks fit.

(4) The value of an asset or liability that is to be vested in consideration of the vesting of another asset or liability shall be equal to the value of that other asset or liability; and, unless the Minister otherwise determines in any particular case, the value of any such asset or liability shall be its book value immediately before the vesting.

Information relating to restructuring plan

8. The Minister may, by written notice to the Bank, AMB, or a government entity at any time (whether before or after a restructuring plan has been approved), require the

Bank, AMB, or a government entity to supply to him within a specified time such information as is specified by the Minister, being information that—

- (a) is, in the opinion of the Minister, relevant to a restructuring plan or any draft of such a plan; and
- (b) is within the possession of the Bank, AMB or the government entity at that time; and
- (c) as far as possible, does not relate to any individual customer of the Bank or AMB.

Approval of restructuring plan by Minister

9.—(1) The Minister shall, as soon as practicable after receiving a draft restructuring plan under section 6 or section 7 and after consultation with such of the Bank, AMB, and the government entity as are affected by the plan and the Reserve Bank, -

- (a) make or cause to be made such amendments to the plan as he considers necessary; and
- (b) approve the plan (together with any such amendments) by notice in the Gazette.

(2) A notice approving a restructuring plan shall identify the plan but the plan need not be incorporated in, or attached to, the notice.

(3) As soon as practicable after a restructuring plan is approved under this section, the Minister shall send a copy of the plan to such of the Bank, AMB, and government entity as are affected by the plan and the Reserve Bank.

Restructuring plan may be amended after approval by Minister

10.—(1) Subject to subsection (3), the Minister may, by notice in the Gazette,—

- (a) amend a restructuring plan at any time or times after the plan has been approved under section 9; and
- (b) specify the day on and from which the amendment shall have effect, which day may be the day on which the restructuring plan took effect or any later day.

(2) If a notice under subsection (1) does not specify the day on and from which the amendment will take effect, that date shall be the day of the notice.

(3) The Minister shall not amend a restructuring plan under this section unless—

- (a) he is satisfied that the amendment is necessary for the purposes of correcting any error in the restructuring plan or is of a purely technical nature; and
- (b) he has consulted such of the Bank, AMB, and government entity as are affected by the plan and the Reserve Bank about the amendment.

(4) A notice amending a restructuring plan under this section shall identify the amendment but the amendment need not be incorporated in, or attached to, the notice.

(5) As soon as practicable after an amendment to a restructuring plan is approved under this section, the Minister shall send a copy of the plan to such of the Bank, AMB, and government entity as are affected by the plan and the Reserve Bank.

Effect of Minister's approval of principal restructuring plan

- 11.—(1) On approval of the principal restructuring plan by the Minister—
- (a) all assets and liabilities of the Bank at the expiry of the day before the restructuring day, other than those assets and liabilities that the principal restructuring plan states are to remain with the Bank, shall, by virtue of this Act, vest in AMB with effect from the commencement of the restructuring day; and
 - (b) all assets and liabilities acquired or incurred by the Bank during the period between the expiry of the day before the restructuring day and the time of approval of the principal restructuring plan by the Minister, other than those assets and liabilities that the principal restructuring plan states are to remain with the Bank, shall, by virtue of this Act, vest in AMB with effect from the time at which they were acquired or incurred by the Bank; and
 - (c) all employees of the Bank at the expiry of the day before the restructuring day, other than those employees that the principal restructuring plan states are to remain with the Bank or who have ceased to be employees of the Bank before the time of approval of the principal restructuring plan by the Minister, shall, by virtue of this Act, be employees of AMB with effect from the commencement of the restructuring day; and
 - (d) all persons who have become employees of the Bank during the period between the expiry of the day before the restructuring day and the time of approval of the principal restructuring plan by the Minister, other than those employees that the principal restructuring plan states are to remain with the Bank or who have ceased to be employees of the Bank before that time, shall, by virtue of this Act, be employees of AMB with effect from the time at which they became employees of the Bank; and
 - (e) all authorities of the Bank at the expiry of the day before the restructuring day, other than those authorities that the principal restructuring plan states are to remain with the Bank, shall by virtue of this Act, be deemed to have been granted to AMB with effect from the commencement of the restructuring day.

(2) The State shall, within 7 days of the approval of the principal restructuring plan, pay to the Bank the amount of capital (if any) specified in the principal restructuring plan under section 6(2)(f); and, when received, that payment shall be deemed to have been made to the Bank on the 1st day of July 1996.

(3) The State shall, at a time or times fixed by the Board with the written approval of the Minister, pay to the Bank the amount of capital specified in the principal restructuring plan under section 6(2)(g).

(4) Any money required to be paid by the State by virtue of either of subsections (2) and (3) shall, without further appropriation than this section, be paid out of the Consolidated Fund.

(5) The provisions set out in Schedule 1 of this Act apply in respect of the vesting of assets and liabilities under this section and the employees of the Bank and AMB.

Effect of Minister's approval of additional restructuring plan

12.—(1) On approval of a restructuring plan (other than the principal restructuring plan) by the Minister, all assets and liabilities that the restructuring plan states are to be vested in the Bank or AMB or a government entity shall, by virtue of this Act, vest in the Bank or AMB or government entity, as the case may be, with effect on and from the day or time stated in the plan as the day or time upon which the plan is to take effect.

(2) The provisions set out in clauses 1, 2, 4(1), 4(2) and 5 to 7 of Schedule 1 of this Act shall, with all necessary modifications, apply in respect of the vesting of an asset or liability under this section as if -

- (a) every reference in those clauses to section 11 were a reference to this section; and
- (b) every reference in those clauses to the Bank were a reference to the person (being the Bank, AMB or government entity) in whom the asset or liability was vested immediately before that vesting; and
- (c) every reference in those clauses to AMB were a reference to the person (being the government entity, Bank or AMB) in whom the asset or liability is vested under this section.

PART 3—NATIONAL BANK OF FIJI

Continuation of Bank

13.—(1) There shall continue to be a bank called the National Bank of Fiji.

(2) The Bank shall—

- (a) be a body corporate with perpetual succession;
- (b) have a common seal;
- (c) be, subject to the provisions of this Act, capable of suing and being sued, and of purchasing and otherwise acquiring, holding and alienating property, real or personal, and of doing or performing such acts and things as bodies corporate may by law do and perform.

(3) The provisions set out in Schedule 2 of this Act shall apply in respect of the Bank.

Functions and powers

14.—(1) The functions of the Bank shall be to—

- (a) operate a bank providing banking services to individuals and other persons principally for personal, rather than business, purposes; and
- (b) provide such non-commercial banking services as it is required to provide under section 15; and
- (c) provide any banking services that it is authorised to provide by regulations.

(2) Subject to subsection (3), for the purposes of carrying out its functions the Bank shall have all such powers as are reasonably necessary or expedient for that purpose and, in particular, shall have the powers set out in Schedule 3 of this Act.

- (3) The Bank shall not exercise any of the powers specified in—
- (a) either of paragraphs (l) and (q) of schedule 3 of this Act; or
 - (b) other than in the ordinary course of its banking business, paragraph (m) of schedule 3 of this Act—

in any particular case unless it has received the written approval of the Minister to do so in that case or in cases of that kind.

(4) Nothing in this section limits any provision of the Reserve Bank of Fiji Act (Cap. 210) or the Banking Act, 1995.

Non-commercial banking services

15.—(1) In this section, the term “non-commercial banking service”, means—

- (a) a banking service that the Board establishes to the satisfaction of the Minister would be likely to materially and adversely affect the profitability, reserves, or solvency of the Bank and accordingly would not be in the commercial interests of the Bank; or
- (b) a service that the Bank is obliged to provide, or an action that the Bank is obliged to take, by reason of a direction under section 20.

(2) The Minister may, on behalf of the State, enter into a contract with the Bank under which the Bank is required to provide a non-commercial banking service on the basis that the State will pay to the Bank the full cost, direct and indirect, to the Bank of providing the service.

(3) If the Minister requires the Bank to provide a non-commercial banking service, and there is no contract between them as to the calculation and payment of the cost of the service, then the State shall pay the amount that the Minister calculates is the full cost, direct and indirect, to the Bank of providing the service.

(4) For the purposes of subsections (2) and (3), the full cost, direct and indirect, to the Bank of providing a non-commercial banking service shall be an amount that—

- (a) provides both an appropriate return on assets employed, and an appropriate return on capital employed, in providing the service, having regard to the equivalent returns achieved in other areas of the Bank's business; and
- (b) has been adjusted to the extent reasonable to do so (including for any ancillary or contingent benefits that accrue or are likely to accrue to the Bank as a result of it providing the service).

Board of Bank

16.—(1) The operations and affairs of the Bank shall be controlled by a board of directors.

- (2) Without limiting section 14, it shall be the duty of the Board to ensure that,—
- (a) as far as is reasonably practicable, the Bank is a commercially viable and successful business; and
 - (b) the operations and affairs of the Bank are conducted—
 - (i) in accordance with its statement of corporate intent and corporate plan; and
 - (ii) as far as is reasonably practicable, in a prudent and efficient manner.

Provisions relating to Board

17.—(1) The Board shall consist of such directors, not being less than 3 nor more than 6 in number, as may be appointed by the Minister from time to time after the day on which this section comes into force.

(2) The directors shall be persons who, in the opinion of the Minister, will bring (either individually or collectively) a wide range of skills to the Board, including—

- (a) the skills necessary to ensure the sound management of the Bank, both financially and generally;
- (b) knowledge of, or experience in, banking.

(3) Before appointing a person as a director, the Minister shall have regard to any potential conflicts of interest that the person may have.

Capital of Bank

18. The capital of the Bank—

- (a) shall, on the restructuring day, be the sum specified for the purposes of this paragraph in the restructuring plan; and
- (b) shall be increased in accordance with section 11(3); and
- (c) may be increased from time to time by such amounts as may be proposed by the Board and approved by the Minister.

Profits of Bank

19.—(1) The profits of the Bank shall be determined in accordance with generally accepted accounting principles adopted in Fiji including the provisions of Fiji Accounting Standards.

(2) The profits of the Bank in each year shall be dealt with as follows:—

- (a) such amount as the Minister may determine, after having regard to the adequacy of the Bank's capital in relation to the size and nature of its business, shall be placed to the credit of the Bank's reserves; and
- (b) any remaining amount shall be paid into the Consolidated Fund.

(3) Nothing in this section limits—

- (a) sections 6 and 23 or any other provision of the Banking Act, 1995; or
- (b) section 40 or any other provision of the Reserve Bank of Fiji Act (Cap. 210);
- (c) the Income Tax Act (Cap 201)

Bank to act in accordance with directions of Minister

20.—(1) In performing its functions under this Act, the Bank shall act in accordance with any general policy directions given to it from time to time by the Minister by notice in the Gazette after consultation with the Board.

(2) If, in the opinion of the Board, any policy direction under subsection (1) is likely to affect adversely the operations or financial position of the Bank, or is inconsistent with any provision applicable to the Bank in the Reserve Bank of Fiji Act (Cap. 210) or in the Banking Act, 1995 or with any regulation, rule, order or other directive by the Reserve Bank to the Bank under any such provision,—

- (a) the Board shall make a written report to that effect to the Minister; and
- (b) no liability of any kind shall attach to the Board or any director, or employee, of the Bank for any action or omission in good faith of the Board, director, or employee that occurs after the date the report is made and that is consequent upon the direction.

(3) Nothing in this section limits section 15.

Application to Bank of Banking Act, 1995

21.—(1) Notwithstanding any other Act or rule of law,—

- (a) the Bank is deemed to have been granted and issued with, on the restructuring day, a licence under the Banking Act, 1995; and
- (b) the licence is deemed, on the restructuring day, to specify the performance of the functions referred to in section 14(1) as the business of the Bank.

(2) Section 75 of the Banking Act, 1995, which relates to the winding up of licensed financial institutions, shall not apply to the dissolution of the Bank under section 23.

(3) Section 13 of the Banking Act, 1995, which relates to the display of a licence, shall not apply to the Bank.

(4) Except as provided in subsections (1), (2) and (3) and in section 69, the Banking Act, 1995 applies to the Bank.

Application to Bank of Reserve Bank of Fiji Act (Cap. 210)

22. Except as provided in section 69, the Reserve Bank of Fiji Act (Cap. 210) applies to the Bank.

Dissolution of Bank

23.—(1) The Bank shall be dissolved on the commencement of the dissolution day.

(2) Subject to subsection (3) of this section, the undertaking of the Bank shall, with effect from the commencement of the dissolution day, vest by virtue of this Act in AMB.

(3) Subsection (2) of this section shall not apply if, before the dissolution day, regulations have been made specifying the corporatisation day as being a day not later than the dissolution day.

(4) Schedule 4 of this Act shall apply, with all necessary modifications, in respect of the vesting of the undertaking of the Bank by subsection (2) as if —

- (a) every reference in that schedule to the Company were a reference to AMB; and
- (b) every reference in that schedule to the corporatisation day were a reference to the dissolution day.

(5) Where the undertaking of the Bank is vested in AMB under subsection (2) and the Minister considers that a creditor of the Bank (other than a depositor) has received or will receive from the Bank in satisfaction of the liability of the Bank an amount (which may be nil) (“the actual payment”) that —

- (a) is less than the amount owing to the creditor by the Bank in respect of the liability; and
- (b) is also less than the amount (“the notional payment”) that the creditor would have received from the Bank in satisfaction of the liability if the undertaking of the Bank had not been vested in AMB under this section -

then the Minister may authorise the payment to the creditor out of the Consolidated Fund, without further appropriation than this subsection, of a sum not exceeding the difference between the actual payment and the notional payment.

PART 4—NBF ASSET MANAGEMENT BANK

Establishment of NBF Asset Management Bank

24.—(1) There is hereby established, with effect on and from the restructuring day, a body corporate to be called the NBF Asset Management Bank (referred to as “AMB” in this Act).

(2) AMB shall—

- (a) be a body corporate with perpetual succession;
- (b) have a common seal;
- (c) be, subject to the provisions of this Act, capable of suing and being sued, and of purchasing and otherwise acquiring, holding and alienating property, real or personal, and of doing or performing such acts and things as bodies corporate may by law do and perform.

(3) The provisions set out in Schedule 2 of this Act shall apply in respect of AMB.

Functions and powers

25.—(1) The functions of AMB are —

- (a) to manage its assets and liabilities with the objective of disposing of or satisfying all of them as soon as practicable, while minimising any loss of value to it; and
- (b) for the purposes of performing the function specified in paragraph (a) of this subsection, to provide banking services principally to persons who are or were customers of the Bank

(2) Subject to subsections (3) and (4), for the purposes of carrying out its functions AMB shall have all such powers as are reasonably necessary or expedient for that purpose and, in particular, shall have the powers set out in Schedule 3 of this Act.

(3) AMB shall not exercise any of the powers set out in Schedule 3 of this Act unless it is authorised to do so by its statement of corporate intent.

(4) Nothing in this section limits any provision of the Reserve Bank of Fiji Act (Cap. 210) or the Banking Act, 1995

Board of AMB

26.—(1) The operations and affairs of AMB shall be controlled by a board of directors.

(2) Without limiting section 25, it shall be the duty of the Board to ensure that, the operations and affairs of AMB are conducted —

- (a) in accordance with its statement of corporate intent and corporate plan; and
- (b) as far as is reasonably practicable, in a prudent and efficient manner.

Provisions relating to Board

27.—(1) The Board shall consist of such directors, not being less than 3 nor more than 5 in number, as may be appointed by the Minister from time to time.

(2) The directors shall be persons who, in the opinion of the Minister, will bring (either individually or collectively) a wide range of skills to the Board, including—

- (a) the skills necessary to ensure the sound management of AMB, both financially and generally;
- (b) knowledge of, or experience in, banking.

(3) Before appointing a person as a director, the Minister shall have regard to any potential conflicts of interest that the person may have.

Payment of surplus funds to State

28.—(1) Subject to subsection (2) but notwithstanding any other provision of any Act or any rule of law, the Minister may at any time or times, by written notice to the Board, require AMB to pay into the Consolidated Fund such amount as the Minister specifies in the notice; and, on such payment, the amount shall become the property of the State.

(2) The Minister may not give a notice under subsection (1)—

- (a) until he has consulted the Board about the amount concerned; and
- (b) unless he is satisfied that the payment of the amount into the Consolidated Fund will not materially disadvantage any creditor of AMB or materially impede AMB in performing its functions or satisfying its obligations.

(3) Nothing in this section limits section 65.

AMB to act in accordance with directions of Minister

29.—(1) In performing its functions under this Act, AMB shall act in accordance with any general policy directions given to it from time to time by the Minister by notice in the Gazette after consultation with the Board.

(2) If, in the opinion of the Board, any policy direction under subsection (1) is likely to affect adversely the operations or financial position of AMB, or is inconsistent with any provision applicable to AMB in the Reserve Bank of Fiji Act (Cap. 210) or in the Banking Act, 1995 or with any regulation, rule, order or other directive by the Reserve Bank to AMB under any such provision,—

- (a) the Board shall make a written report to that effect to the Minister; and
- (b) no liability of any kind shall attach to the Board or any director, or employee of AMB for any action or omission in good faith of the Board, director, or employee that occurs after the date the report is made and that is consequent upon the direction.

Application of Banking Act, 1995 to AMB

30.—(1) Notwithstanding any other Act or rule of law,—

- (a) AMB is deemed to have been granted and issued with, on the restructuring day, a licence under the Banking Act, 1995; and
- (b) the licence is deemed, on the restructuring day, to specify the performance of the functions referred to in section 25(1) as the business of AMB.

(2) The following provisions of the Banking Act, 1995 shall not apply to AMB:

- (a) section 6, which relates to minimum capital requirements;
- (b) section 13, which relates to the display of a licence;
- (c) section 23, which relates to restrictions on dividends;
- (d) section 24(1)(a), which relates to exposure limits;
- (e) section 28, which relates to publication of financial statements;
- (f) section 29(2), which relates to minimum asset requirements of licensed financial institutions.

(3) Section 75 of the Banking Act, 1995, which relates to the winding up of licensed financial institutions, shall not apply to the dissolution of AMB under section 32.

(4) The Reserve Bank shall not exercise any of the powers specified in any of sections 21, 22(3), and 30 of the Banking Act, 1995 in respect of AMB in any particular case unless —

- (a) it has had regard to the functions of AMB specified in section 25(1); and
- (b) it has received the written approval of the Minister to do so in that case or in cases of that kind.

(5) Before exercising any of the powers specified in any of sections 11, 14, and 15 of the Banking Act, 1995 in respect of AMB, the Reserve Bank shall have regard to the functions of AMB specified in section 25(1).

(6) For the purposes of section 17 of the Banking Act, 1995, which relates to financial institutions under the same ownership, AMB shall be deemed not to be a financial institution under the same ownership as the Bank or Company, as the case may be.

(7) Except as provided in subsections (1) to (6) and in section 69, the Banking Act, 1995 applies to AMB.

Application of Reserve Bank of Fiji Act (Cap. 210) to AMB

31.—(1) The following provisions of the Reserve Bank of Fiji Act (Cap. 210) shall not apply to AMB:

- (a) section 40, which relates to required reserves;
- (b) section 43, which relates to minimum holdings of unimpaired liquid assets;
- (c) section 44, which relates to local assets ratio;

(2) Except as provided in subsection (1) and in section 69, the Reserve Bank of Fiji Act (Cap. 210) applies to AMB.

Dissolution of AMB

32.—(1) AMB may be dissolved at any time by regulations made by the Minister.

(2) The undertaking of AMB at the time of its dissolution under subsection (1) shall from that time vest by virtue of this Act in the State.

(3) Schedule 4 of this Act shall apply, with all necessary modifications, in respect of the vesting of the undertaking of AMB by subsection (2) as if -

- (a) every reference in that schedule to the Bank were a reference to AMB; and
- (b) every reference in that schedule to the Company were a reference to the State; and
- (c) every reference in that schedule to the corporatisation day were a reference to the day on which the undertaking of AMB is vested in the State under subsection (2).

PART 5—CORPORATISATION OF BANK

Assessment of commercial viability of Bank

33.—(1) The Minister shall cause to be prepared and submitted to him, no later than 2 months before the dissolution day, a report on the future commercial viability of the Bank by a person or firm independent of the Bank, the Reserve Bank, and the Government.

(2) The Reserve Bank shall submit to the Minister, no later than 2 months before the dissolution day, a report stating whether or not it would grant to the Bank under the Banking Act, 1995 a licence to conduct banking business if such an application was made at that time and, if so, on what terms and conditions such a licence would be granted.

- (3) The Minister shall, no later than 1 month before the dissolution day,—
- (a) consider the reports submitted to him under subsections (1) and (2) and such other information and advice as he thinks fit; and
 - (b) advise the Bank and the Reserve Bank in writing whether he intends that the undertaking of the Bank be transferred to a company established under section 34.

Incorporation of Company

34.—(1) Notwithstanding anything in the Companies Act (Cap. 247) or any other enactment or rule of law, the Minister may cause to be formed and registered under that Act a private company limited by shares that—

- (a) has the name “National Bank of Fiji Limited” or another name approved in writing by the Minister; and
- (b) has an authorized and subscribed share capital of such number of \$1 ordinary shares as has been approved in writing by the Minister.

(2) All the shares referred to in subsection (1)(b) shall be subscribed for on behalf of the State by the relevant Minister and the Minister of Finance in equal proportions.

(3) Except as provided in this section and in section 37, the Companies Act shall apply to the Company.

(4) Nothing in this Act limits or prevents the name of the Company being changed, or the capital of the Company being altered, in accordance with the provisions of the Companies Act.

Board of Company

35.—(1) The operations and affairs of the Company shall be controlled by a board of directors appointed in accordance with the articles of association of the Company.

- (2) It shall be the duty of the Board to ensure that,—
- (a) as far as is reasonably practicable, the Company is a commercially viable and successful business; and
 - (b) the operations and affairs of the Company are conducted—
 - (i) in accordance with its statement of corporate intent and corporate plan; and
 - (ii) as far as is reasonably practicable, in a prudent and efficient manner.

(3) The directors shall be persons who, in the opinion of the Minister, will bring (either individually or collectively) a wide range of skills to the Board, including -

- (a) the skills necessary to ensure the sound management of the Company, both financially and generally;
- (b) knowledge of, or experience in, banking.

(4) Before a person is appointed as a director, the appointor shall have regard to any potential conflicts of interest that the person may have.

(5) This section shall have effect only so long as more than half of the voting shares in the Company are owned by or on behalf of the State.

Transfer of undertaking of Bank to Company

36.—(1) On the corporatisation day, by virtue of this Act,—

- (a) the undertaking of the Bank shall vest in the Company; and
- (b) all the shares referred to in section 34(1)(b) shall be deemed to have been allotted to the relevant Minister and the Minister of Finance, on behalf of the State, in equal proportions.

(2) The provisions set out in Schedule 4 of this Act apply in respect of the vesting of the undertaking of the Bank in the Company under this section.

(3) Nothing in section 56(1)(b) of the Companies Act (which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for a consideration other than cash) shall apply to shares which are deemed to have been allotted pursuant to subsection (1)(b).

State shareholding

37.—(1) The relevant Minister and the Minister of Finance each may, on behalf of the State, at any time or times—

- (a) subscribe for or otherwise acquire shares or other securities in the capital of the Company;
- (b) if authorised to do so by a resolution of the House of Representatives, sell or otherwise dispose of any shares or other securities in the capital of the Company (including shares deemed, under section 36, to have been allotted to those Ministers on the corporatisation day) to such persons and on such terms and conditions as those Ministers think fit.

(2) All money required for the purposes of this section or section 34 shall be paid out of public money appropriated by Parliament for the purpose.

(3) Shares or other securities in the capital of the Company held in the name of a person described as the relevant Minister or the Minister of Finance shall be held by the person for the time being holding the office of relevant Minister or Minister of Finance, as the case may be.

(4) Notwithstanding any other enactment or rule of law, it shall not be necessary to complete or register a transfer of shares or other securities in the capital of the Company consequent upon a change in the person holding office as relevant Minister or Minister of Finance, as the case may be.

(5) The relevant Minister or the Minister of Finance, as the case may be, may exercise all the rights and powers attaching to the shares or other securities in the capital of the Company held by that Minister.

(6) The relevant Minister or the Minister of Finance, as the case may be, may at any time or times when the Minister holds shares in the Company, by written notice to the Company, authorize (on such terms and conditions as are specified in the notice) such person as the relevant Minister or the Minister of Finance thinks fit to act as that Minister's representative at any or all of the meetings of shareholders of the Company or of any class of such shareholders, and any person so authorized shall be entitled to exercise the same powers on behalf of the relevant Minister or the Minister of Finance as that Minister could exercise if present in person at the meeting or meetings.

PART 6—REPORTING AND OTHER ACCOUNTABILITY REQUIREMENTS

DIVISION 1—GENERAL

Definitions

38. In this Act, unless the context otherwise requires,—

“organisation” means each of—

- (a) the Bank; and
- (b) AMB; and
- (c) the Company, so long as more than half of its voting shares are owned by or on behalf of the State;

“financial year”, in relation to—

- (a) the Bank or AMB; or
- (b) the Company, so long as more than half of its voting shares are owned by or on behalf of the State,—

means a year ending on the 30th day of June or on such other day as the Minister may from time to time determine after consultation with the Board.

Validity of certain transactions

39. The failure of any organisation, or subsidiary of an organisation, to comply with a provision of this Part, or any requirement set out in a statement of corporate intent or corporate plan, does not affect the validity or enforceability of any deed, agreement, right or obligation entered into, obtained or incurred, by the organisation or subsidiary.

DIVISION 2—STATEMENT OF CORPORATE INTENT

Bank, AMB and Company to have statements of corporate intent

40.—(1) A statement of corporate intent is an annual document and contains a summary of the main elements of an organisation's corporate plan and other matters set out in this Act.

(2) Each organisation shall have a statement of corporate intent for each financial year.

Statement of corporate intent to apply to subsidiaries

41. If an organisation has subsidiaries, its statement of corporate intent shall apply to its subsidiaries except to the extent (if any) otherwise agreed in writing by the Minister.

Matters to be included in statement of corporate intent

42.—(1) A statement of corporate intent shall specify the financial and non-financial performance targets for the activities of the organisation for the relevant financial year.

(2) Each statement of corporate intent shall include the following additional matters—

- (a) an outline of the objectives of the organisation and its subsidiaries;
- (b) an outline of the nature and scope of the activities proposed to be undertaken by the organisation during the relevant financial year;
- (c) an outline of the organisation's main undertakings during the relevant financial year or years;
- (d) an outline of the borrowings made, and proposed to be made, and the corresponding sources of funds by the organisation;
- (e) an outline of the organisation's policies and procedures relating to the acquisition and disposal of major assets;
- (f) the organisation's accounting policies;
- (g) in addition to the financial and non-financial performance targets required by subsection (1), any other measures by which the performance of the organisation may be judged in relation to its objectives;
- (h) an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the State;
- (i) the procedures to be followed before the organisation or any of its subsidiaries subscribes for, purchases, or otherwise acquires shares in any company or other organisation;
- (j) the Board's estimate of the commercial value of the State's investment in the organisation and the manner in which, and the times at which, this value is to be reassessed;
- (k) the type of information to be given to the Minister during the course of the financial year, including information to be given in half-yearly and annual reports;
- (l) such other matters as are agreed by the Minister and the Board or are directed by the Minister.

(3) The Minister may exempt an organisation in writing from including any matter, or any aspect of a matter, mentioned in subsection (2) in its statement of corporate intent.

(4) Subsection (2) does not limit the matters that may be included in a statement of corporate intent.

(5) The statement of corporate intent of the Bank shall also state any non-commercial banking services (as defined in section 15) that the Bank is providing or is to provide.

Draft statement of corporate intent

43. The Board of each organisation shall prepare, and submit to the Minister, a draft statement of corporate intent—

- (a) in the case of the Bank and AMB, within 1 month of the day on which the Minister approves the principal restructuring plan under section 9 and, in the case of the Company, within 1 month of its being registered under the Companies Act; and
- (b) in each case, not later than 1 month after the commencement of each subsequent financial year.

Adoption of statement of corporate intent

44.—(1) The Board of an organisation is to give effect to any comments on the draft statement of corporate intent that are made to it by the Minister within 1 month after the date of the Minister receiving the draft statement from the organisation, and shall deliver the completed statement of corporate intent to the Minister within 2 months after that date.

(2) If the Minister does not agree with the statement of corporate intent delivered by an organisation, the Minister may, by written notice, direct the Board—

- (a) to take specified steps in relation to the draft statement; or
- (b) to make specified modifications to the draft statement.

(3) The Board shall immediately comply with a direction under subsection (2).

(4) An organisation's statement of corporate intent for the relevant year becomes effective—

- (a) on the day that the Minister agrees to it; or
- (b) if the Minister does not agree to it, on the day that the statement, finalised in compliance with a direction issued under subsection (2), is delivered to the Minister.

Modification of statement of corporate intent

45.—(1) An organisation's statement of corporate intent may be modified by its Board with the agreement of the Minister.

(2) The Minister may, by written notice, direct the Board of an organisation to modify its statement of corporate intent.

DIVISION 3—CORPORATE PLAN

Bank, AMB and Company to have corporate plan

46.—(1) A corporate plan is an annual document that sets out the plan for future operations of the organisation concerned.

(2) Unless otherwise exempted in writing by the Minister, each organisation shall have a corporate plan and it is the duty of the Board of every organisation to ensure that the organisation acts in accordance with the corporate plan.

Corporate plan to apply to subsidiaries

47. If an organisation has subsidiaries, the corporate plan shall apply also to its subsidiaries except to the extent (if any) that the Minister otherwise agrees by written notice to the organisation.

Guidelines for corporate plans

48.—(1) The Minister may issue guidelines about the format of corporate plans.

(2) Every organisation shall comply with the guidelines except to the extent otherwise agreed in writing by the Minister.

(3) A corporate plan shall, except to the extent (if any) otherwise agreed in writing by the Minister, specify for the organisation and its subsidiaries (if any), forecasts relating to the current financial year and the next two financial years of profit and loss account, balance sheet, cash flows and a statement of the assumptions on which the forecasts are based.

Draft corporate plan

49. The Board of the organisation shall prepare, and submit to the Minister, a draft corporate plan—

(a) in the case of the Bank and AMB, within 1 month of the day on which the Minister approves the principal restructuring plan under section 9 and, in the case of the Company, within 1 month of its being registered under the Companies Act; and

(b) in each case, not later than 1 month after the commencement of each subsequent financial year.

Adoption of draft corporate plan

50.—(1) The Board of an organisation is to give effect to any comments on the draft corporate plan that are made to it by the Minister within 1 month after the date of the Minister receiving the draft corporate plan from the organisation, and shall deliver the completed corporate plan to the Minister within 2 months after that date.

(2) The corporate plan shall be consistent with the organisation's statement of corporate intent.

Modification of corporate plan

51.—(1) Subject to subsection (2), an organisation's corporate plan may be modified by its Board at any time, provided that the corporate plan, as so modified, is consistent with the organisation's statement of corporate intent.

(2) A modification of a corporate plan shall not be effective until the Minister has approved the modification.

DIVISION 4—AUDITS, REPORTS ETC

Audit

52.—(1) Every organisation shall be audited at least once in every year.

(2) The audit shall be conducted in accordance with the audit provisions of the Companies Act (and for this purpose the Bank and AMB shall each be deemed to be a company), the Banking Act, 1995 (where applicable), and any other applicable legal requirements.

(3) The Minister shall each year, in respect of each organisation and on behalf of the organisation, appoint an auditor in accordance with section 58(1), (2), and (7) of the Banking Act, 1995 (whether or not the organisation is a licensed financial institution under that Act); but no such appointment shall be made unless -

- (a) the Minister has consulted with the Board about the appointment; and
- (b) where the organisation is such a licensed financial institution, the appointment has been approved by the Reserve Bank.

(4) Subsection (3) applies notwithstanding any Act (other than the Banking Act, 1995) or rule of law or, in the case of the Company, any provision of its memorandum or articles of association.

(5) The auditor or any person authorised by him in writing shall be entitled at all reasonable times to full and free access to all accounts, records, documents, papers and information of the organisation concerned.

(6) This section applies also to a subsidiary of an organisation, except to the extent (if any) otherwise agreed in writing by the Minister in any particular case or class of cases.

(7) Nothing in this section limits the Income Tax Act (Cap.201).

Half yearly reports

53.—(1) Each organisation shall give to the Minister a report on the operations of the organisation and its subsidiaries (other than any subsidiaries that the Minister agrees, by written notice to the organisation, need not be included in the report) for the first half of each financial year.

(2) A report under subsection (1) shall be given to the Minister-

- (a) within 2 months after the end of the first half of the financial year concerned;
- or
- (b) if another period after the end of the first half of the financial year is agreed between the Board and the Minister, within the agreed period.

(3) A report under subsection (1) shall include the information required to be given in the report by the organisation's statement of corporate intent.

Draft annual report and unaudited accounts

54.—(1) Within 3 months after the end of each financial year of an organisation, its Board shall give to the Minister—

- (a) a draft report of the operations of the organisation and those of its subsidiaries (other than any subsidiaries that the Minister agrees, by written notice to the organisation, need not be included in the report) during that financial year; and
- (b) unaudited consolidated financial statements for that financial year consisting of such statements as the Minister (after consulting the Reserve Bank) considers appropriate for that organisation and financial year.

(2) A draft report shall as far as possible contain the information required to be contained in an annual report by subsections (2), (3), and (4) of section 55.

Annual reports and audited accounts

55.—(1) Within 4 months after the end of each financial year of an organisation (or such longer period as the Minister may agree to in writing in any particular case), its Board shall give to the Minister—

- (a) an annual report of the operations of the organisation and those of its subsidiaries (other than any subsidiaries that the Minister agrees, by written notice to the organisation, need not be included in the report) during that financial year; and
- (b) audited consolidated financial statements for that financial year consisting of such statements as the Minister (after consulting the Reserve Bank) considers appropriate for that organisation and financial year; and
- (c) the auditor's report on those financial statements.

(2) Each annual report of an organisation shall contain such information as is necessary to enable an informed assessment of the operations of the organisation and those of its subsidiaries to which the report relates, including a comparison of its performance with its statement of corporate intent.

(3) Each annual report of the Company shall also—

- (a) include the matters that are required to be included in, or to accompany, the Company's annual return under the Companies Act;
- (b) state the dividend payable to the State for the financial year to which the report relates.

(4) This section does not limit the matters that are required to be included in, or to accompany, the Company's annual report by the Companies Act.

Deletion of commercially sensitive matters from annual report etc.

ended notes
56.—(1) If an organisation's Board requests the Minister to delete from the copies of its annual report that are to be laid before Parliament or otherwise made public, a matter that is of a commercially sensitive nature, the Minister may delete the matter from the copies of the annual report (and accompanying documents) that are laid before Parliament or otherwise made public.

(2) An annual report of an organisation may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

- (a) the summary indicates that it is a summary only; and
- (b) a full statement of the matter is laid before Parliament at the same time as a copy of the annual report is laid before Parliament.

Further information and investigations

57.—(1) An organisation's Board shall—

- (a) keep the Minister reasonably informed of—
 - (i) the operations, financial performance and financial position of the organisation and its subsidiaries, including the assets and liabilities, profits and losses, and prospects of the organisation and its subsidiaries; and
 - (ii) the effect of the financial performance and financial position of the organisation and its subsidiaries on the guarantee given by the State under section 62 or section 63, or section 64, as the case may be; and
- (b) give to the Minister the reports and information that the Minister requires to enable an informed assessment of the matters mentioned in paragraph (a) to be made; and
- (c) if matters arise that in the Board's opinion may prevent, or significantly affect, achievement of the objectives or targets outlined in its statement of corporate intent or corporate plan, immediately inform the Minister of the matters and its opinion in relation to them; and
- (d) give to the Minister, before each meeting of the Board, a copy of the notice of meeting given to directors.

(2) The Minister may at any time or times appoint a person to attend, and report to the Minister on, one or more specified Board meetings, or all Board meetings during any finite or infinite period or periods; and any person so appointed may attend and speak, but not vote, at that meeting or those meetings.

(3) The Minister may require an organisation to prepare and deliver, at a time and in a manner specified by the Minister—

- (a) further information (whether financial or otherwise) in a form specified by the Minister;
- (b) a report on such matters as are specified by the Minister.

(4) The Minister may at any time appoint a person to make a special investigation of the financial or other affairs of an organisation and to report thereon to the Minister. Where such a person is appointed in respect of an organisation, the Board shall ensure that—

- (a) the organisation promptly supplies to the person all information requested by the person that is within the possession or control of the organisation ; and
- (b) the person is given full and free access at all reasonable times to all accounts, records, papers and documents (whether in writing, electronic, or other form) that are within the possession or control of the organisation.

Information to be laid before Parliament

58.—(1) Within 10 sitting days of receiving any of the following documents in respect of a financial year of an organisation, the Minister shall lay those documents before the House of Representatives and the Senate:

- (a) the statement of corporate intent of the organisation for that financial year;
- (b) the annual report and audited financial statements of the organisation for that financial year and the preceding financial year, and the auditor's report on those financial statements.

(2) If a statement of corporate intent for an organisation has been modified pursuant to section 48, the Minister shall lay before the House of Representatives and the Senate a copy of the statement of corporate intent as so modified, within 10 sitting days of the date of the modification.

Protection from disclosure of customer information

59. Nothing in this Act shall be construed as requiring the inclusion in any corporate plan, statement of corporate intent, half-yearly report, annual report, or financial statements, or in any report or information that the Minister requires under section 57 of this Act, of any information that an organisation is prohibited from disclosing under section 71(1) of the Banking Act, 1995.

DIVISION 5—EMPLOYEES

Division applies to subsidiaries

60. Except to the extent (if any) that the Minister otherwise agrees by written notice to the organisation concerned, this Division applies to a subsidiary of an organisation and its employees in the same way as it applies to the organisation and its employees.

Employment and industrial relations plan

61.—(1) An organisation's Board shall prepare an Employment and Industrial Relations Plan.

(2) The plan shall specify the arrangements for all major employment and industrial relations issues for the organisation.

- (3) The plan shall include the following matters—
- (a) the organisation's remuneration arrangements, including—
 - (i) the remuneration payable for its Chief Manager (or chief executive officer) and other senior executives; and
 - (ii) any gain sharing schemes;
 - (b) other employment considerations applicable to its employees;
 - (c) the approximate number of its employees that are covered by an award or industrial agreement;
 - (d) the approximate number of its employees that are employed under an employment contract;
 - (e) policies adopted and measures taken to bring staff levels into accord with work requirements.
- (4) The plan may specify measures to ensure adherence to it.
- (5) The plan shall be copied to the Minister and to the Public Service Commission at the time that the organisation's statement of corporate intent is submitted to the Minister.

PART 7 - GUARANTEE AND FUNDING BY THE STATE

Guarantee of deposits with Bank

62.—(1) The repayment of all moneys deposited in the Bank, together with such interest as may be due thereon, is guaranteed by the State and accordingly, if at any time the assets of the Bank are insufficient to pay or meet the lawful claims of every depositor, the Minister shall cause such deficiency to be paid or met out of the Consolidated Fund.

(2) Nothing in this section shall be construed as enabling any person having any claim against the Bank or its funds to institute proceedings in respect thereof against the State.

(3) This section shall cease to have effect from the commencement of the corporatisation day.

Guarantee of certain deposits with Company

63.—(1) This section shall have effect from the commencement of the corporatisation day.

(2) In this section,—

“call deposit expiry time” means the time that is 2 years after the effective time;

“effective time” means the commencement of the day that is 12 months after the corporatisation day or such earlier time as is specified by regulations for the purposes of this section.

(3) Subject to subsections (4) to (6), the repayment of all moneys deposited in the Bank or the Company before the effective time, together with such interest as may be due thereon, is guaranteed by the State and accordingly, if at any time the assets of the Company are insufficient to pay or meet the lawful claims of every such depositor, the Minister shall cause such deficiency to be paid or met out of the Consolidated Fund.

(4) Every call deposit made with the Bank or the Company before the effective time shall, to the extent that it has not been repaid before the call deposit expiry time, be regarded for the purposes of this section as a new deposit made at the call deposit expiry time.

(5) Where a deposit made with the Bank or the Company before the effective time matures but is renewed (whether with or without any variation of the terms of the deposit), the renewal of the deposit shall for the purposes of this section be regarded as a new deposit made at the time of the renewal.

(6) Where the amount of a deposit made with the Bank or the Company before the effective time varies after the effective time, the amount (other than interest) guaranteed under this section in respect of that deposit at any time shall be the lesser of—

- (a) the amount of the deposit at that time; and
- (b) the amount of the deposit at the effective time.

(7) Nothing in this section shall be construed as enabling any person having any claim against the Company or its funds to institute proceedings in respect thereof against the State.

Guarantee of deposits with AMB

64.—(1) The repayment of all moneys deposited in AMB (including those originally deposited in the Bank and transferred to AMB), together with such interest as may be due thereon, is guaranteed by the State and accordingly, if at any time the assets of AMB are insufficient to pay or meet the lawful claims of every depositor, the Minister shall cause such deficiency to be paid or met out of the Consolidated Fund.

(2) Nothing in this section shall be construed as enabling any person having any claim against AMB or its funds to institute proceedings in respect thereof against the State.

Funding of AMB

65.—(1) Any one or more of the Minister (acting on behalf of the State), AMB and the Reserve Bank may at any time or times enter into one or more deeds, agreements, arrangements, and understandings with any other or others of them or with any other person or persons relating to the performance by the State of its obligations under section 64.

(2) Without limiting subsection (1), any deed or agreement entered into under subsection (1) may include provisions providing for or giving effect to any one or more of the following:

- (a) the establishment by the State of a trust account with the Reserve Bank on the basis, among other things, that all money in the trust account (from whatever source) is the property of the State at all times;
- (b) the establishment of a settlement account for AMB with the Reserve Bank into which money received by AMB shall be paid and out of which payments by AMB will be made;

- (c) the transfer from time to time of any money in the trust account to the settlement account for the purpose of providing AMB with funds to meet its obligations;
- (d) the transfer from time to time (including on a daily basis) of any money in any such settlement account to any such trust account (whether or not in repayment of amounts transferred under paragraph (c));
- (e) the provision of a standby credit line by the Reserve Bank to AMB;
- (f) the guarantee by the State of payment of all moneys payable by AMB to the Reserve Bank in respect of any standby credit line;
- (g) anything specified in regulations for the purposes of this paragraph—

and, notwithstanding any other Act or rule of law, any such provision in any such deed or agreement shall have full force and effect.

(3) Within 10 sitting days after a deed or agreement under subsection (1) is entered into, the Minister shall lay a copy of the deed or agreement before the House of Representatives and the Senate.

(4) Where the Minister considers that a creditor of AMB (other than a depositor) has received or will receive from AMB in satisfaction of a liability of AMB an amount (which may be nil) ("the actual payment") that -

- (a) is less than the amount owing to the creditor by AMB in respect of the liability; and
- (b) is also less than the amount ("the notional payment") that the creditor would have received from AMB in satisfaction of the liability if no deed or agreement under subsection (1) had been entered into -

then the Minister may authorise the payment to the creditor out of the Consolidated Fund, without further appropriation than this subsection, of a sum not exceeding the difference between the actual payment and the notional payment.

Provisions relating to guarantees and funding agreement

66.—(1) Any money required to be paid by the State by virtue of any of sections 62 to 65, or under any deed, agreement, arrangement, understanding, or guarantee entered into under section 65, shall, without further appropriation than this section, be paid out of the Consolidated Fund.

(2) Any money paid by the State by virtue of either of sections 62 and 63 shall constitute a debt due to the State from the Bank (or from the commencement of the corporatisation day, from the Company), and shall be recoverable as such in any Court of competent jurisdiction.

(3) Any money paid by the State by virtue of section 64 shall constitute a debt due to the State from AMB, and shall be recoverable as such in any court of competent jurisdiction.

PART 8—MISCELLANEOUS

Income tax

67.—(1) Notwithstanding any other Act or rule of law, the income of the Bank in respect of every income year ending on or before the 30th day of June 1996 shall be exempt from income tax.

(2) The income of the Bank in respect of every income year ending on or after the 30th day of June 1997 shall not be exempt from income tax.

(3) Notwithstanding any other Act or rule of law, the income of AMB in respect of every income year ending on or after the 30th day of June 1997 shall be exempt from income tax.

(4) Notwithstanding any other Act or rule of law, for the purposes of section 22(3) of the Income Tax Act (Cap. 201), where shares in a company are vested in AMB or the Company by virtue of this Act, the shareholders of the company immediately after the vesting shall be deemed to be substantially the same as the shareholders of the company immediately before the vesting.

(5) For the purposes of the Income Tax Act (Cap. 201), the value of each asset specified in any restructuring plan shall, on the vesting of the asset in accordance with the plan, be—

- (a) the value of that asset specified in the plan; or
- (b) such other value as is agreed between the Bank and the Commissioner of Inland Revenue.

No taxes or duties

68.—(1) The vesting of any assets or liabilities by virtue of any of sections 11, 12, 23, 32, and 36 shall not, for the purposes of the Value Added Tax Decree 1991, be treated as a supply of any goods or services.

- (2) Nothing in the Stamp Duties Act (Cap. 205) shall apply to—
- (a) the vesting of any assets or liabilities by virtue of any of sections 11, 12, 23, 32, and 36; or
 - (b) any other thing effected by or pursuant to this Act.

Application of Banking Act, 1995 and the Reserve Bank of Fiji Act (Cap.210)

69. Notwithstanding any other Act or rule of law,—
- (a) section 61 of the Reserve Bank of Fiji Act (Cap.210), which relates to prohibited names of banks, shall not apply to—
 - (i) the Bank;
 - (ii) AMB;
 - (iii) the Company, so long as more than half of its voting shares are owned by or on behalf of the State.

- (b) section 22 of the Banking Act, 1995, which relates to alterations, reconstructions, arrangements and agreements by licensed financial institutions, shall not apply to—
- (i) the repeal of the National Bank of Fiji Act (Cap.213) by this Act;
 - (ii) the preparation of or any effect of a restructuring plan;
 - (iii) the vesting in AMB of the undertaking of the Bank by section 23;
 - (iv) the vesting in the Company of the undertaking of the Bank by section 36; and
 - (v) the vesting in the State of the undertaking of AMB by section 32.

Regulations

70.—(1) The Minister may, after consultation with the Board of the Bank or AMB as the case may be, make regulations in relation to or for all or any of the following matters or purposes:

- (a) the conduct of the business of the Bank or of AMB; and, in particular, in relation to—
- (i) the payment out of money standing to the credit of, and to the delivery of bonds or securities held on behalf of, a deceased depositor, without production of probate of his will or of letters of administration to his estate;
 - (ii) the payment out of money standing to the credit of, and to the delivery of bonds or securities held on behalf of, a person under a legal incapacity;
- (b) changing the name of the Bank or of AMB;

(2) The Minister may, after consultation with the Board of the Bank and the Board of AMB, make regulations in relation to or for all or any of the following matters or purposes:—

- (a) establishing an NBF Administration Unit for the purpose of supplying administration services to the Bank and AMB; and, in particular,—
- (i) providing that the Unit shall form part of either the Bank or AMB, or be independent of both;
 - (ii) providing a procedure for the Bank and AMB to agree, on an annual basis, the services that will be provided by the Unit and the payments, or the basis for or methods of calculating the payments, that are to be made by the Bank and AMB for those services;
 - (iii) providing a procedure for the Bank and AMB to agree, on an annual basis, the resources (including premises, equipment, and employees) that will be provided by each of the Bank and AMB to the Unit for the purposes of enabling it to supply services to the Bank and AMB and the payments, or the basis for or methods of calculating the payments, that are to be made by the Unit for those resources;
 - (iv) providing a procedure for any dispute between the Bank and AMB in relation to the Unit to be referred to the Minister for determination, and

- (b) transitional and savings matters relating to the coming into force of any provision of this Act, and, in particular,—
- (i) requiring each of the Bank and AMB to make documents, records, and other information held by it available to the other;
 - (ii) specifying the ownership (which may be joint) of particular assets or rights held by the Bank immediately before the restructuring day;
 - (iii) permitting AMB to accept as cheques drawn on it, cheques which state that they are drawn on the Bank.
- (3) The Minister may, after consultation with the Board of the Bank, make regulations in relation to or for either or both of the following matters or purposes:
- (a) authorising the Bank to provide any banking services;
 - (b) specifying a day (not being more than 12 months after the corporatisation day) as the “effective time” for the purposes of section 63.
- (4) The Minister may, by regulations made after consultation with the Board of AMB, dissolve AMB.
- (5) The Minister may by regulations do all or any of the following:
- (a) specify a day to be the corporatisation day;
 - (b) specify a day (not being later than the 31st day of December 1998) to be the dissolution day;
 - (c) declare any entity to be a subsidiary of the Bank, AMB, or the Company for the purposes of this Act;
 - (d) specify matters for the purposes of section 65(2).
- (6) The Minister may by regulations provide for such other matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Repeals and revocations

71.—(1) The National Bank of Fiji Act (Cap. 213), and all amendments to that Act, are hereby repealed.

- (2) The National Bank of Fiji Regulations are hereby revoked.

Consequential repeals and amendments

72.—(1) Section 58(1) of the Reserve Bank of Fiji Act (Cap.210) is hereby consequentially repealed.

- (2) Section 68 of the Banking Act, 1995 is hereby consequentially repealed.

SCHEDULE 1
(Sections 11 and 12)

PROVISIONS RELATING TO TRANSFER OF ASSETS AND LIABILITIES
AND EMPLOYEES FROM BANK TO AMB

Definitions

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

“transferred assets and liabilities” means the assets and liabilities vested under section 11; and “transferred asset” and “transferred liability” have corresponding meanings;

“transferred employee” means a person whose employment with the Bank has become employment with AMB under section 11;

“vesting time”, in relation to a transferred asset or transferred liability, means the time at which the transferred asset or transferred liability is vested by virtue of this Act.

Provisions relating to transfer of assets and liabilities

2 Without limiting the generality of section 11, the following provisions shall have effect in relation to each transferred asset and transferred liability from the vesting time for that asset or liability —

- (a) a reference (express or implied) to the Bank in any instrument, register, record, notice, security, document or communication made, given, passed, or executed at any time and that relates to a transferred asset or transferred liability shall be read and construed as a reference to AMB;
- (b) every contract, agreement, conveyance, deed, lease, licence, or other instrument, undertaking, or notice, (whether or not in writing), entered into by, made with, given to or by, or addressed to the Bank (whether alone or with any other person) before the vesting time (and subsisting immediately before the vesting time) and that relates to a transferred asset or transferred liability shall, to the extent that it was previously binding on and enforceable by, against, or in favour of the Bank, be binding on and enforceable by, against, or in favour of AMB as fully and effectually in every respect as if, instead of the Bank, AMB had been the person by whom it was entered into, with whom it was made or to or by whom it was given or addressed, as the case may be;

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- (c) an instruction, order, direction, mandate, or authority given to the Bank in relation to a transferred asset or transferred liability and subsisting immediately before the vesting time shall be deemed to have been given to AMB;
- (d) a security held by the Bank as security for a transferred asset that is a debt or other liability to the Bank shall be available to AMB 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 AMB incurred after the vesting time; and, in relation to a security, AMB shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the Bank would have been entitled or subject if this Act had not been passed;
- (e) all the rights and liabilities of the Bank as bailor or bailee of any document or chattel that is or relates to a transferred asset or transferred liability shall be vested in and assumed by AMB;
- (f) a negotiable instrument or order for payment of money that relates to a transferred asset or transferred liability and that before the vesting time is drawn on or given to or accepted or endorsed by the Bank or payable at a place of business of the Bank shall, unless the context otherwise requires, have the same effect on and after the vesting time as if it had been drawn on or given to or accepted or endorsed by AMB instead of the Bank or was payable at the place of business of AMB.
- (g) during the period from the vesting time until the time of approval of the restructuring plan concerned, the Bank shall have the authority to make any decisions in respect of that asset or liability (including the authority to sell the asset).

Employees

3.—(1) For the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of a transferred employee, the contract of employment of that employee shall be deemed to have been unbroken and the period of service with the Bank shall be deemed to have been a period of service with AMB.

(2) Subject to subclause (3), the terms and conditions of employment of each transferred employee shall, until varied by AMB, be identical with the terms and conditions of that employee's employment with the Bank immediately before the time at which the employee became an employee of AMB and be capable of variation in the same manner.

(3) AMB may assign any transferred employee to any position determined by it and assign any duties and responsibilities determined by it to a transferred employee, whether or not the position, duties or responsibilities are the same as those the employee had as an

employee of the Bank.

(4) No transferred employee shall be entitled to receive any payment or other benefit by reason only of that employee—

- (a) ceasing by virtue of this Act to be an employee of the Bank; or
- (b) having as an employee of AMB a position, duties, or responsibilities that are different from those he had as an employee of the Bank.

(5) The Bank may, after the commencement of the restructuring day, assign any of its employees to any position determined by it and assign any duties and responsibilities determined by it to an employee, whether or not the position, duties or responsibilities are the same as those the employee had before the restructuring day.

(6) No employee of the Bank shall be entitled to receive any payment or other benefit by reason only of—

- (a) that employee having, after the commencement of the restructuring day, a position, duties, or responsibilities that are different from those he had before the restructuring day; or
- (b) any change in the nature or size of the Bank whether before, on, or after the restructuring day.

Legal rights to continue

4.—(1) Nothing effected or authorised by this Act shall -

- (a) place the Bank, or AMB, or any other person in breach of contract or confidence or otherwise make any of them guilty of a civil wrong; or
- (b) give rise to, or entitle any such other person to exercise, a right for any such person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
- (c) place the Bank, or AMB, 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 any assets or liabilities or the disclosure of any information; or
- (d) release any surety wholly or in part from any obligation; or
- (e) invalidate or discharge any contract or security.

(2) Any action, arbitration or proceedings or cause of action that relates to a transferred asset or transferred liability and that immediately before the vesting time is pending or existing by, against, or in favour of the Bank or to which the Bank 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 AMB.

(3) Where the Minister considers that a creditor of AMB (other than a depositor) has received or will receive from AMB in satisfaction of a liability of the Bank vested in AMB by section 11, an amount (which may be nil) ("the actual payment") that—

- (a) is less than the amount owing to the creditor by AMB in respect of the liability; and
- (b) is also less than the amount ("the notional payment") that the creditor would have received from the Bank in satisfaction of the liability if this Act had not been enacted, and the Bank had received no new capital on or after the restructuring day —

then the Minister may authorise the payment to the creditor out of the Consolidated Fund, without further appropriation than this subclause, of a sum not exceeding the difference between the actual payment and the notional payment.

Books and documents to remain evidence

5. Any document, matter, or thing that relates to a transferred asset or transferred liability and that, if this Act had not been passed, would have been admissible in evidence in respect of any matter for or against the Bank shall, on and after the vesting time, be admissible in evidence in respect of the same matter for or against AMB.

Registers

6.—(1) No registrar of deeds or lands or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the provisions of this Act to change the name of the Bank to that of AMB 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 AMB,—

- (a) executed or purporting to be executed by AMB; and
- (b) relating to any asset or liability ; and
- (c) containing a recital that that asset or liability has become vested in AMB, by virtue of the provisions of this Act—

shall, in the absence of evidence to the contrary, be sufficient proof that the asset or liability is vested in AMB.

References to Bank in other Acts

7. Every reference to the Bank in any Act (other than this Act, the Banking Act, 1995 and the Reserve Bank of Fiji Act (Cap.210)) or decree, or in any regulation, order, or notice made or given under any Act (other than this Act, the Banking Act, 1995 and the Reserve Bank of Fiji Act (Cap.210)) or decree in relation to a transferred asset or transferred liability or transferred employee shall, from the vesting time, be read and construed as a reference to AMB.

SCHEDULE 2
(Sections 13 and 24)

PROVISIONS RELATING TO BANK AND AMB

Chairman and Deputy Chairman of Board

1.—(1) The Minister shall from time to time appoint one director as the chairman of the Board, and one director as the deputy chairman of the Board.

(2) Any director holding the office of chairman or deputy chairman of the Board may at any time be removed from the office of chairman or deputy chairman by the Minister.

(3) Any director holding the office of chairman or deputy chairman of the Board may at any time resign the office of chairman or deputy chairman by written notice to the Minister.

(4) If the chairman or deputy chairman of the Board ceases to be a director of the Bank or AMB, as the case may be, he shall thereupon vacate the office of chairman or deputy chairman.

(5) If the deputy chairman of the Board is appointed as chairman of the Board, he shall vacate the office of deputy chairman.

Provisions relating to appointment of directors

2.—(1) Every director—

- (a) shall be appointed for a term not exceeding 3 years; and
- (b) shall be paid such remuneration as the Board may from time to time determine, except that the aggregate amount for directors' remuneration in respect of any financial year shall not exceed an amount approved by the Minister for that purpose; and
- (c) subject to the provisions of this Act, shall be appointed on such terms and conditions as the Minister from time to time determines; and
- (d) shall be eligible for reappointment.

(2) If a director dies, resigns, is dismissed or otherwise ceases to hold office during his period of appointment, another person may be appointed to fill the vacancy for the remainder of the period of appointment of the director so ceasing.

Vacation of office

3.—(1) No person shall be capable of appointment, or of continuing to act, as a director of the Bank or AMB, who is—

- (a) a member of either House of Parliament; or
- (b) the Governor, a member of the Board of Directors or an employee of the Reserve Bank of Fiji; or
- (c) subject to subclause (3), an employee of the Bank or AMB or of a bank within the meaning of section 2(1) of the Banking Act, 1995.

(2) Notwithstanding any provision of this Act or of any deed or agreement, the office of a director shall immediately be vacated if—

- (a) the director is not capable of acting as such by virtue of subclause (1); or
- (b) the Minister so notifies the director and the Bank or AMB, as the case may be, in writing; or
- (c) the director resigns his office by notice in writing to the Minister and to the Bank or AMB, as the case may be; or
- (d) the term of appointment of the director expires; or
- (e) the director is absent from the whole of all meetings of the Board during any period of 60 consecutive days without the prior written permission of the chairman or deputy chairman to his being absent from at least one of those meetings.

(3) Subclause (1) shall not preclude the Chief Manager or any executive officer appointed under clause 13, from being appointed by the Minister as a director of the Bank or AMB, or from continuing to act as such a director following his appointment as such.

Meetings of Board

4.—(1) Meetings of the Board shall be held at such times, and either at such places or as provided in clause 8 (which relates to teleconference meetings), as the Board or its chairman (or, in the absence of the chairman, the deputy chairman) from time to time appoints.

(2) Notice of a meeting of the Board shall be given to each director and shall be delivered by hand or sent by post, telex, facsimile, or other written message to his address supplied to the Board for this purpose.

(3) At any meeting of the Board the quorum necessary for the transaction of business shall be a majority of the directors at that time.

(4) A meeting of the Board at which the quorum is present shall be competent to exercise all or any of the authorities, powers, and discretions exercisable by the Board generally.

Chairman to preside at meetings

5.—(1) At each meeting of the Board the chairman of the Board shall preside if that person is present and willing to preside.

(2) If the chairman is not present or willing to preside at any such meeting, the deputy chairman, if present and willing to preside, shall preside.

(3) If neither the chairman nor a deputy chairman is present and willing to preside at any such meeting, the directors present shall elect a director who is present to preside at that meeting, and the person so elected shall have and may exercise all the powers and functions of the chairman for the purposes of that meeting.

Voting at meetings of Board

6. All questions arising at any meeting of the Board shall be decided by a majority of the votes cast by the directors present. Each director shall have one vote. In the case of an equality of votes, the chairman of the meeting shall have a second or casting vote.

Resolution assented to by all directors

7. A resolution in writing signed or assented to by letter, telex, facsimile, or other written message, by every director for the time being of the Bank or AMB, as the case may be, shall be as valid and effective as if it had been passed at a meeting of the Board duly called and constituted. Any such resolution may consist of several documents in like form, each signed or purported to have been dispatched by one or more directors.

Teleconference meeting of Board

8.—(1) The contemporaneous linking together by telephone or other means of communication of a number of directors of the Bank or AMB, as the case may be, being not less than the relevant quorum provided by clause 4(3), whether or not one or more of the directors is out of Fiji, shall be deemed to constitute a meeting of the Board of the Bank or AMB, and all of the provisions of this Schedule shall apply to that meeting, if the following conditions are met:

- (a) notice shall have been given, by telephone or other means of communication, to every director for the time being entitled to receive notice of a meeting of the Board; and
- (b) each of the directors taking part in the meeting by telephone or other means of communication must—
 - (i) be linked by telephone or such other means for the purposes of the meeting; and
 - (ii) at the commencement of the meeting acknowledge, to all the other directors taking part, the director's presence for the purpose of a meeting of the Board; and
 - (iii) be able throughout the meeting to hear each of the other directors taking part; and
 - (iv) on any vote, individually express his vote to the meeting.

(2) A director shall not leave a meeting held under subclause (1) by disconnecting the director's telephone or other means of communication unless the director has previously obtained the express consent of the chairman of the meeting. A director shall be conclusively presumed to have been present, and to have formed part of the quorum, at all times during the meeting by telephone or other means of communication unless the director has previously obtained the express consent of the chairman to leave the meeting.

(3) A minute of the proceedings at a meeting held under subclause (1) shall be sufficient evidence of those proceedings, and the observance of all necessary formalities, if certified as a correct minute by the chairman of the meeting.

Procedure of Board

9. Subject to this Act, the Board may regulate its procedure in such manner as it thinks fit.

Disclosure of interests of directors

10.—(1) Any director of the Bank or AMB, as the case may be, who, otherwise than as a director, is directly or indirectly interested in the exercise or performance of any function, power, or duty by the Bank or AMB, or who is directly or indirectly interested in any arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Bank or AMB shall, as soon as practicable after the relevant facts have come to the director's knowledge, disclose the nature of the interest to the Board.

(2) Where a director makes a disclosure under this clause, that director -

(a) shall not take part, after the disclosure, in any deliberation or decision of the Board relating to the exercise or performance of the function, power, or duty by the Bank or AMB or relating to the arrangement, agreement, or contract; but

(b) may be counted for the purpose of forming a quorum of the Board for any such deliberation or decision.

(3) Failure to comply with this clause shall not affect the validity of any action taken, or arrangement, agreement, or contract made, by the Bank or AMB, as the case may be.

(4) The Minister may by written notice to the Board waive or modify any of the provisions of this clause in respect of any particular director or matter, or class of matters that, in the Minister's opinion, does not constitute a direct or indirect material interest.

(5) The Minister shall lay before the House of Representatives and the Senate a copy of any notice issued under subclause (4) within 10 sitting days after the date on which the Minister issues the notice.

Committees

11. The Board may from time to time appoint and dissolve one or more committees of the Board, and—

- (a) with the written approval of the Minister, any such committee may consist of or include persons who are not directors of the Bank or AMB, as the case may be; and
- (b) the Board shall regulate the procedure of each such committee in such manner as it thinks fit.

Delegations

12.—(1) The Board may, by written notice, delegate any of its functions, duties, or powers, or any of the functions, duties, or powers of the Bank or AMB, as the case may be, to the Chief Manager or to any committee of the Board, director, employee, consultant, or agent.

(2) A delegation may be to any named person or to any member of a specified class of persons. If the delegation is to a class of persons, it shall, unless otherwise provided in the delegation, apply to each member of the class for the time being irrespective of any change in membership of the class.

(3) Unless otherwise provided in the delegation, a delegate may exercise the function, duty, or power in the same manner and with the same effect as if the delegate were the Board or the Bank or AMB, as the case may be, but may not further delegate the function, duty, or power.

(4) Every delegation shall be revocable at will and no such delegation shall prevent the exercise of the function, duty, or power by the Board or the Bank or AMB, as the case may be.

(5) Every delegate purporting to act under any delegation under this clause shall, until the contrary is proved, be presumed to be acting in accordance with the terms of the delegation.

Appointment of Chief Manager, Secretary and executive officers

13.—(1) The Board may appoint an employee of the Bank or AMB, as the case may be, as Chief Manager on such terms and conditions as the Board may determine.

(2) The Board may appoint an employee of the Bank or AMB, as the case may be, as secretary of the Board on such terms and conditions as the Board may determine.

(3) The Board may appoint such employees of the Bank or AMB, as the case may be, as executive officers as it considers necessary for the proper carrying out of the provisions of this Act, on such terms and conditions as the Board may determine.

(4) The Board may remove the Chief Manager, secretary or any executive officer who is considered by the Board—

- (a) to be incapable of carrying out his duties; or

- (b) to be guilty of misconduct or neglect in the performance of his duties; or
- (c) to have failed to comply with the requirements of subclause (6) of this clause; or
- (d) to have acted or be acting in a manner prejudicial, or likely to be prejudicial, to the interests of the Bank or AMB, as the case may be.

(5) The Chief Manager shall be accountable to the Board for the prudent management of the Bank or AMB, as the case may be, in accordance with the policies of the Board and shall, except as may otherwise be provided in this Act, or any resolution of the Board, have the power to act and to enter into contracts and to sign instruments and documents on behalf of the Bank or AMB, and may, with the approval of the Board, delegate such powers to other employees of the Bank or AMB, as the case may be.

(6) The Chief Manager, secretary, and every executive officer shall devote the whole of his service to the Bank or AMB, as the case may be, and shall not while holding office, without the approval of the Board—

- (a) receive any remuneration from any office or any employment other than with the Bank or AMB; or
- (b) hold any other office or employment, whether for remuneration or not, except as a nominee of the Bank or AMB; or
- (c) actively engage in any other business either as shareholder, partner, sole trader or agent.

Appointment of employees

14. The Board may appoint on such terms and conditions as it shall determine such permanent, temporary and casual employees of the Bank or AMB, as the case may be, as it considers are necessary from time to time.

Liability of directors and employees

15. No director or employee of the Bank or AMB, as the case may be, shall be personally liable for any liability of the Bank or AMB, or for any act done or omitted by the Bank or AMB or by any of its directors or employees in good faith and without negligence in pursuance or intended pursuance of the functions, duties, or powers of the Bank or AMB.

Secrecy

16.—(1) Except for the purposes of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any law, no director or employee of the Bank or AMB, as the case may be, shall disclose to any person any information relating to the operations or affairs of the Bank or AMB or relating to the account of any customer of the Bank or AMB.

(2) Any person who contravenes subclause (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$20,000.

Common seal

17.—(1) The Board of the Bank or AMB, as the case may be, shall provide for the safe custody of the common seal of the Bank or AMB which shall be in such form as the Board shall decide. The common seal shall be used only by the authority of a resolution of the Board, or of a committee of the Board authorised in that behalf, and every document to which the common seal is affixed shall be signed by two persons, each of whom is—

- (a) a director or secretary of the Bank or AMB; or
- (b) a person appointed by the Board for the purpose of signing that document or documents of that kind.

(2) The common seal of the Bank or AMB shall be judicially noticed in all Courts and for all purposes.

Method of contracting

18.—(1) A contract or other enforceable obligation may be entered into by the Bank or AMB as follows:

- (a) an obligation which, if entered into by a natural person, is, by law, required to be by deed, may be entered into on behalf of the Bank or AMB, as the case may be, in writing signed under the common seal of the Bank or AMB;
- (b) an obligation which, if entered into by a natural person, is, by law, required to be in writing (but is not required to be by deed), may be entered into on behalf of the Bank or AMB in writing by a person acting under the Bank's or AMB's express or implied authority;
- (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Bank or AMB in writing or orally by a person acting under the Bank's or AMB's express or implied authority.

(2) Notwithstanding subclause (1), a contract or other enforceable obligation that is required to or may be entered into by the Bank or AMB under either of sections 15 and 65 may, if approved by either the Board or the Minister, be entered into on behalf of the Bank or AMB, as the case may be, in writing signed—

- (a) under the common seal of the Bank or AMB; or
- (b) by the Minister or (with the approval of the Minister) the Permanent Secretary for Finance.

(3) Subclauses (1) and (2) apply to a contract or other obligation -

- (a) whether or not that contract or obligation was entered into in Fiji; and
- (b) whether or not the law governing the contract or obligation is the law of Fiji.

Right to use "NBF"

19. Notwithstanding any other Act or rule of law, the Bank and AMB shall each be entitled to use the expression "NBF" in relation to their operations and affairs, except where—

- (a) any such new use by one of them would be identical or almost identical to any existing use by the other; and
- (b) that new use would be likely to deceive or cause confusion.

Transfer of assets

20. Each of the Bank and AMB may from time to time assign, convey, or otherwise transfer one or more of its assets to any person on such terms and conditions as it thinks fit—

- (a) whether or not there is any prohibition against, or restriction in relation to, such transfer in any Act, rule of law, deed, contract, agreement, security, or arrangement; and
- (b) if the consent of any other person to the transfer would (but for this clause) be required, whether or not that consent has been obtained.

SCHEDULE 3
(Sections 14 and 25)

POWERS OF BANK AND AMB

Subject to sections 14(3) and 25(3), the Bank and AMB may each do all or any of the following for the purpose of performing its functions:

- (a) receive money on current account or on deposit, and borrow, raise, or take up money, on any terms with or without security and from any person (including a department of government, a statutory authority, and any bank or other financial institution);
- (b) deposit, lend, or advance money, securities, or other property, with or without security, and generally make or negotiate loans and advances of every kind;

- (c) draw, make, accept, endorse, grant, discount, acquire, subscribe or tender for, buy, sell, issue, execute, guarantee, negotiate, transfer, hold, invest or deal in, honour, retire, pay and secure or otherwise dispose of obligations, instruments (whether or not transferable or negotiable), and securities of every kind;
- (d) grant, issue, negotiate, and otherwise deal in letters of credit, circular notes, drafts, and other forms of credits and instruments of every kind;
- (e) buy, sell, and otherwise deal in Fiji or foreign currency;
- (f) receive on deposit or for safe custody or otherwise documents, cash, securities, and valuables of every description;
- (g) collect, hold, and transmit money and securities; and act as agents for the receipt or payment of money or for the receipt or delivery of securities and documents;
- (h) issue, and transact business in respect of, all types of banker's cards and credit cards, whether issued by it or by any other person or company;
- (i) enter into any guarantee, bond, recognisance, contract of indemnity or suretyship and otherwise give security or become responsible for the performance of any obligation or duties by any person or company;
- (j) purchase, take options over, take on lease or in exchange, hire, or otherwise acquire any estate or interest in real or personal property, on such terms and for such consideration as may be thought fit; and construct, develop, maintain, and manage real and personal property of any kind;
- (k) sell, exchange, mortgage, let on rent or royalty or share profit or otherwise, improve, manage, turn to account, grant licences or easements or options or other rights over, or in any other manner deal with or dispose of any of its assets for such consideration as may be thought fit;
- (l) enter into partnership or any profit-sharing arrangement, joint venture or similar arrangement;
- (m) invest any of its money in such investments, securities, and any other kind of property (whether real or personal) as may be thought fit, and hold, sell, or otherwise deal with such investments, securities, or property;

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- (n) establish branches and agencies at such places as the Board shall resolve, and for this purpose to rent, lease or otherwise acquire premises;
- (o) arrange with a person to act as its agent in any place, whether within or beyond Fiji;
- (p) act as the agent of any bank (including the Reserve Bank of Fiji) carrying on business within or beyond Fiji;
- (q) establish, or acquire all or any of the shares in, any company;
- (r) anything that it is authorised to do by regulations made under section 70;
- (s) anything that is reasonably incidental to anything in paragraphs (a) to (q) of this schedule.

SCHEDULE 4
(Sections 23, 32 and 36)

PROVISIONS RELATING TO TRANSFER OF UNDERTAKING OF
BANK TO COMPANY

Provisions relating to transfer of undertaking of Bank

1. Without limiting the generality of section 36 or any other provision of this Act, the following provisions shall have effect on and from the corporatisation day -

- (a) a reference (express or implied) to the Bank in any instrument, register, record, notice, security, document or communication made, given, passed, or executed at any time shall be read and construed as a reference to the Company;
- (b) all contracts, agreements, conveyances, deeds, leases, licences, guarantees, indemnities, and other instruments, undertakings, and notices, (whether or not in writing), entered into by, made with, given to or by, or addressed to the Bank (whether alone or with any other person) before the corporatisation day and subsisting immediately before the corporatisation day shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the Bank, be binding on and enforceable by, against, or in favour of the Company as fully and effectually in every respect as if, instead of the Bank, the Company 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;

- (c) an instruction, order, direction, mandate, or authority given to the Bank and subsisting immediately before the corporatisation day shall be deemed to have been given to the Company;
- (d) a security held by the Bank as security for a debt or other liability to the Bank incurred before the corporatisation day shall be available to the Company 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 Company incurred on or after the corporatisation day; and, in relation to a security, the Company shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the Bank would have been entitled or subject if this Act had not been passed;
- (e) all the rights and liabilities of the Bank as bailor or bailee of documents or chattels shall be vested in and assumed by the Company;
- (f) a negotiable instrument or order for payment of money which before the corporatisation day is drawn on or given to or accepted or endorsed by the Bank or payable at a place of business of the Bank shall, unless the context otherwise requires, have the same effect on and after the corporatisation day as if it had been drawn on or given to or accepted or endorsed by the Company instead of the Bank or was payable at the place of business of the Company;
- (g) the Company shall be deemed to have been granted and issued with, on the corporatisation day, a licence under the Banking Act, 1995 on the same terms and conditions as the Bank was licensed immediately before the corporatisation day.

Legal rights to continue

2.—(1) Nothing effected or authorised by this Act shall—

- (a) place the Bank, or the Company, or any other person in breach of contract or confidence or otherwise make any of them guilty of a civil wrong; or
- (b) give rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
- (c) place the Bank, or the Company, 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 any property or the disclosure of any information; or
- (d) release any surety wholly or in part from all or any obligation; or
- (e) invalidate or discharge any contract or security.

(2) Any action, arbitration or proceedings or cause of action which immediately before the corporatisation day is pending or existing by, against, or in favour of the Bank or to which the Bank 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 the Company.

Employees

3. Notwithstanding any other provision of this Act—

- (a) on the corporatisation day each employee of the Bank shall become an employee of the Company but, for the purposes of every enactment, law, award, 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 Bank shall be deemed to have been a period of service with the Company;
- (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 Bank immediately before the corporatisation 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 Bank.

Books and documents to remain evidence

4. Any document, matter, or thing, which if this Act had not been passed would have been admissible in evidence in respect of any matter for or against the Bank shall, on and after the corporatisation day, be admissible in evidence in respect of the same matter for or against the Company.

Registers

5.—(1) No registrar of deeds or lands 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 the Bank to that of the Company 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 the Company,—

- (a) executed or purporting to be executed by the Company; and
- (b) relating to any property held immediately before the corporatisation day by the Bank; and
- (c) containing a recital that that property has become vested in the Company, 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 Company.

References to Bank in other enactments

6. On and after the corporatisation day every reference to the Bank in any Act (other than this Act, the Banking Act, 1995 and the Reserve Bank of Fiji Act (Cap.210)) or decree or in any regulation, order, or notice made or given under any Act (other than this Act, the Banking Act, 1995 and the Reserve Bank of Fiji Act (Cap.210)) or decree shall be read and construed as a reference to the Company.

Income Tax

7. For the purposes of the Income Tax Act (Cap. 201) on and from the corporatisation day —

- (a) the Bank and the Company shall be deemed to be the same person; and
- (b) all transactions entered into by, and acts of, the Bank before the corporatisation day shall be deemed to have been entered into by, or to be those of, the Company and to have been entered into or performed by the Company at the time when they were entered into or performed by the Bank.

Capital of Company

8. Any reserves held by the Bank immediately before the corporatisation day—

- (a) shall, on the corporatisation day and to the extent agreed in writing by the Minister, be deemed to have been applied in paying any amounts owing by the Minister and the relevant Minister to the Company in respect of the shares in the Company held by the Ministers;
- (b) otherwise, shall from the commencement of the corporatisation day, be deemed to be reserves of the Company.

Passed by the House of Representatives this Twenty-Fifth day of July, in the year of our Lord, One Thousand, Nine Hundred and Ninety-Six.

Passed by the Senate this Twelfth day of August, in the year of our Lord, One Thousand, Nine Hundred and Ninety-Six.