

COLONIAL FIJI LIFE ACT 1999

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ACT NO. 21 OF 1999



I assent.

[L.S.]

K. K. T. MARA
President

[20.9.99]

AN ACT

TO PROVIDE FOR THE VESTING OF LIFE INSURANCE AND INCIDENTAL BUSINESS CARRIED ON BY THE COLONIAL MUTUAL LIFE ASSURANCE SOCIETY LIMITED IN THE FIJI ISLANDS IN COLONIAL FIJI LIFE LIMITED, AND FOR RELATED PURPOSES.

ENACTED by the Parliament of the Fiji Islands—

Part I—PRELIMINARY

Short title

1. This Act may be cited as the Colonial Fiji Life Act 1999.

Commencement

2. This Act comes into force on a date appointed by the Minister by notice in the *Gazette*

Interpretation

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

“appointed time” means 12:01 a.m. Fiji standard time on the first business day after the effective day;

“business” means the life insurance business conducted by CMLA in the Fiji Islands and includes business carried on by CMLA in the Fiji Islands as incidental to that life insurance business and the goodwill of that business;

“business day” means a day when banks are open in the Fiji Islands for the conduct of the full range of banking business;

“CMLA” means The Colonial Mutual Life Assurance Society Limited CAN 004 021 809, a corporation incorporated in the State of Victoria, Commonwealth of Australia;

“CMLA employee” means a person employed by CMLA in the business immediately before the appointed time;

“CFL” means Colonial Fiji Life Limited, a company incorporated in the Fiji Islands;

“CFL No. 1 Statutory Fund” means the fund established by CFL under that name for the purposes of Part VII of the Insurance Act 1998;

“effective day” means—

- (i) the day on which CMLA notifies the Minister for Finance that the Reserve Bank of Fiji has approved (or is deemed to have approved) the Scheme without modification under section 157(1)(a) of the Insurance Act 1998; or
- (ii) if the Reserve Bank of Fiji approves the Scheme subject to any modification or terms and conditions under section 157(1)(b) of the Insurance Act 1998 – the day on which CMLA and CFL notify the Minister of Finance that they accept the modification or terms and conditions;

“No. 7 Statutory Fund” means No. 7 Statutory Fund established and operated by CMLA, being a statutory fund under Part 4 of the Life Insurance Act 1995 of the Commonwealth of Australia;

“policy” means a life insurance policy issued by CMLA in the course of the business which at the appointed time is current or capable of revival;

“policy holder” means a person holding a policy;

“Scheme” means the scheme pursuant to Part IX of the Insurance Act 1998 proposed by CMLA and CFL to the Reserve Bank of Fiji for the transfer of CMLA’s Fiji Islands insurance business to CFL.

Part II—VESTING CMLA BUSINESS IN CFL

Vesting CMLA business in CFL

4. At the appointed time the business is deemed to have been divested from CMLA and vested in CFL absolutely.

Vesting of assets, contracts, etc in CFL

5.—(1) At the appointed time, all assets of the No. 7 Statutory Fund are deemed to have been divested from CMLA and vested absolutely in CFL as assets of the CFL No. 1 Statutory Fund.

(2) At the appointed time, all contracts, agreements, conveyances, deeds, leases, licences and other instruments or undertakings entered into by or made with or addressed to CMLA (whether alone or with any other person) relating to the business in force immediately prior to the appointed time, to the extent that they were before that time binding upon or enforceable by or against CMLA, become binding and of full force and effect in every respect in favour of or against CFL, as fully and effectually as if, instead of CMLA, CFL had been a party to them or bound by them or entitled to the benefit of them.

Assumption of liabilities under the policies by CFL

6. At the appointed time—

(a) CFL is deemed to have assumed—

- (i) all actual and contingent liabilities and obligations of CMLA under each policy; and
- (ii) all other liabilities of CMLA in respect of the business, being liabilities and obligations lawfully chargeable to the No. 7 Statutory Fund;

(b) each policy holder and each person claiming through or under the policy holder (on the one hand) and CFL and the CFL No. 1 Statutory Fund (on the other hand) becomes entitled and subject to the rights, liabilities and obligations (including rights of set-off) which immediately before the appointed time existed between the policy holder and such person (on the one hand) and CMLA and the No. 7 Statutory Fund (on the other hand);

(c) any instruction, order, direction, mandate or authority given to CMLA by a policy holder subsisting at or given after the appointed time is deemed to have been given to CFL, unless and until revoked or cancelled;

(d) in each policy or proposal or other instrument in force at the appointed time consisting or evidencing a liability, a reference to CMLA or to the No. 7 Statutory Fund has effect as a reference to CFL or to the CFL No. 1 Statutory Fund (as the case may be);

- (d) CFL becomes entitled to the same rights and priorities and subject to the same obligations and incidents in relation to any security vested or deemed to have been transferred to CFL by this Act (and the moneys secured by that security) as CMLA would have been entitled and subject to if CMLA had continued to hold that security; and
- (e) each policy holder is deemed to have agreed to release CMLA from any liability or obligation in respect of the policy held by the policy holder.

Assumption of responsibility, for employees

7.—(1) From the appointed time, CFL must assume responsibility as employer for each CMLA employee.

(2) Without limiting subsection (1), CFL will regard the service of each CMLA employee with CMLA as being continuous with the employee's service with CFL for the purposes of any accrued entitlement to annual leave, sick leave or long service leave accrued, but not taken, by the CMLA employee while an employee of CMLA.

(3) From the appointed time, for all purposes, CFL has the same rights, entitlements, responsibilities and liabilities in respect of each CMLA employee as CMLA had immediately before the appointed time.

Release and discharge of CMLA

8. At the appointed time CMLA is released and discharged from all further actual and contingent liabilities and obligations under each policy and from all other liabilities and obligations in respect of the business, including liabilities and obligations lawfully chargeable to the No. 7 Statutory Fund.

Deemed consents etc. for vesting

9.—(1) Any consent, approval, permit, certification or ratification required by or under any written law—

- (a) for the vesting of any asset of CMLA to which CFL has become entitled by this Act;
- (b) for the vesting of any mortgage, transfer, bill of sale or other security given or made to CMLA to which CFL has become entitled by this Act;
- (c) for the vesting of any transfer made or security given to CMLA to secure any loan or interest on any lien or any remedy for the enforcement of any loan to which CFL has become entitled by this Act; or
- (d) for the vesting of any other right or benefit of CMLA to which CFL has become entitled by this Act,

seemed to have been granted on the effective day, so that the asset, land, chattel or chose in action the subject of the mortgage, transfer, bill of sale or other security (or any part of or other right or benefit can be vested in CFL by this Act.

(2) From the appointed time CFL may enforce any mortgage, transfer, bill of sale or other security, enforce any right and obtain any benefit referred to in section (1), including exercise of any power of sale, re-entry, seizure, foreclosure or any other right, as if it were named in the relevant instrument and in any relevant register in place of CMLA.

Non-abatement of actions and rights by or against CFL

10 (1) Any action, arbitration or proceeding and any cause of action which at the appointed time is pending or existing by, against or in favour of CMLA does not abate nor is discontinued or in any way prejudicially affected by this Act, but may be prosecuted, continued and enforced by, against or in favour of CFL as if and when it might have been prosecuted, continued and enforced by, against or in favour of CMLA if this Act had not been enacted.

(2) At the appointed time, the rights and liabilities of CMLA in respect of each action, arbitration, proceeding and cause of action referred to in sub-clause (1) vest in CFL and CFL is substituted for CMLA as the party to each such action, arbitration, proceeding or cause of action.

Part III—CONSEQUENTIAL MATTERS

Evidence admissible by or against CFL

11. Any book, thing or document (within the meaning of the Evidence Act (Cap. 41)) which would have been evidence in respect of any matter for or against CMLA if this Act had not been enacted must on and after the appointed time be admitted in evidence in respect of the same matter for or against CFL.

Directions to Registrars to record transfers

17 (1) Upon application by CFL in respect of any grant or certificate of title, mortgage, lease or other instrument or document the Registrar of Titles and Registrar of Deeds respectively must make—

- (a) all entries upon the instruments or documents under his or her control or in his or her custody that are necessary or expedient in consequence of the transfer of property under this Act; and
- (b) any other memorials or entries in any public record under his or her control or in his or her custody that are necessary or expedient to record the transfer or property to CFL under this Act.

(2) Upon application by CFL, the Registrar of Companies must make all entries upon or in relation to any security and to the register of charges under the Companies Act (Cap. 247) that are necessary or expedient to record the transfer of property to CFL under this Act.

(3) Upon application by CFL, a person holding the office of Registrar pursuant to any written law (other than the Registrar of Titles, Registrar of Deeds and the Registrar of Companies) must make all entries and records with respect to any property or security in any public record under the person's control that are necessary or expedient to record the transfer of property or security to CFL under this Act.

(4) Upon application by CFL, a person maintaining any register required by any written law (other than a person holding the office of Registrar referred to in subsections (1), (2) and (3)) must make all entries and records with respect to any property or security in the register maintained by the person that are necessary or expedient to record the transfer of property or security to CFL under this Act.

Holders of title documents to produce them for recording of transfers

13. Upon application by CFL to the Registrar of Titles in respect of any grant or certificate of title, mortgage, lease or other instrument or document for the purpose of the Registrar of Titles making the entries required by section 12(1), the holder of the relevant instrument or document must produce it to the Registrar of Titles for that purpose.

No fees or charges required

14. No fee or charge needs to be paid in respect of any document or instrument sought to be registered for the purpose of evidencing, recording or effecting the matters referred to in sections 4 to 12 inclusive, notwithstanding any provision to the contrary in any written law.

Effect of entry into possession by CFL not to affect rights or accrued losses

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

(2) The vesting and transfer effected by this Act do not constitute a default nor invalidate, discharge or otherwise render unenforceable any deed, contract or security and do not constitute an assignment, transfer, devolution, parting with possession or other disposition of an interest in any deed, contract or security for the purpose of any instrument in existence at the appointed time containing a provision which relates to assignment, transfer, devolution, parting with possession or other disposition of any interest in the deed, contract or security.

(3) The vesting and transfer effected by this Act do not constitute a change of ownership of any companies or businesses which were assets of the No. 7 Statutory Fund, do not affect the legal status of any losses accrued by those companies or businesses.

CFL to publish notice

16.—(1) On the first business day after the appointed time CFL must cause a notice of the Scheme to be published in a newspaper circulating in the Fiji Islands stating—

- (a) that the CFL No. 1 Statutory Fund has been established;
- (b) the date on which the CFL No. 1 Statutory Fund was established; and
- (c) the nature of the insurance business to which the CFL No. 1 Statutory Fund relates.

(2) On the publication of the notice referred to in sub-section (1), the holders of policies of CFL are deemed to have complied with the notice requirements of section 112 of the Insurance Act 1998.

Persons licensed as agents for CFL

17. From the appointed time each person who was licensed to carry on insurance business as an agent of CMLA in the Fiji Islands under the Insurance Act 1998 immediately before the appointed time is deemed to be licensed to carry on business as an agent of CFL in the Fiji Islands.

Exemption from stamp duty

18.—(1) All documents or instruments brought into existence for the purpose of recording, evidencing or effecting matters referred to in sections 4 to 12 inclusive are exempt from stamp duty under the Stamp Duties Act (Cap. 205).

- (2) Without limiting subsection (1), the Stamp Duties Act does not—
- (a) apply to any agreement brought into existence for the purpose of recording, evidencing or effecting any transfer of property of CMLA to CFL or the vesting of any such property in CFL;
 - (b) apply to any instrument recording, evidencing or effecting anything which is the subject of this Act; or
 - (c) operate to impose or attract any duty, fine, impost, penalty or assessment required to give effect to this Act.

Operation of the Act

19.—(1) This Act operates to the exclusion of any other written law relating to or affecting the transfer of property, land titles or securities, companies or the keeping of public records, and to the extent of any conflict or inconsistency between this Act and any other written law, this Act prevails.

(2) This Act is binding on all persons and has effect notwithstanding anything in the instruments constituting CMLA and CFL or in their respective articles of association or other rules.

(3) Nothing in this Act prevents the creation by CFL of additional statutory funds and the re-allocation of assets by CFL between CFL's statutory funds after the appointed time in accordance with the law at that time.

Irregularities concerning transfer and vesting

20. The transfer and vesting of any right or obligation by this Act is not invalidated by any accidental omission or procedural irregularity.

Part IV—REGULATIONS

Additional regulation making power

21. The Minister of Finance may make regulations for the purpose of giving effect to the Scheme.

Passed by the House of Representatives this 27th day of August 1999.

Passed by the Senate this 15th day of September 1999.