
4th Session Second Parliament Trinidad and Tobago
19 Elizabeth II



TRINIDAD AND TOBAGO

Act No. 25 of 1970

[L.S.]

AN ACT to amend the Banking Act, 1964.

[Assented to 30th June, 1970]

BE IT ENACTED by the Queen's Most Excellent Majesty, Enactment
by and with the advice and consent of the Senate and
House of Representatives of Trinidad and Tobago, and
by the authority of the same, as follows:—

1. This Act may be cited as the Banking (Amendment) Short title
Act, 1970.

Act No. 26 of
1964 amended

2. The Banking Act is amended—

- (a) by renumbering “Part VII” as “Part VIII” and by renumbering sections 30, 31 and 32 as sections 34, 35 and 36;
- (b) by inserting after section 29 thereof the following new Part:—

“PART VII

FACILITATION OF TRANSFERS OF
UNDERTAKINGS

Interpre-
tation of
Part VII

30. In this Part—

“the appointed day” means such day as is appointed by a Bank Undertaking Vesting Order for the coming into force of that Order;

“customer” includes any person having a banking account or other dealing, transaction or arrangement with the transferee bank or transferor bank (as the case may be) in the course of business;

“existing” means existing or in force (as the case may require) immediately before the appointed day;

“security” includes a mortgage or charge (whether legal or equitable), debenture, guarantee, lien, pledge (whether actual or constructive), hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability or obligation (whether present or future, actual or contingent);

“undertaking” means the business of banking carried on by a bank or any part of the business of banking so carried on;

“will” includes a codicil and any other testamentary writing.

Bank
Under-
taking
Vesting
Order

31. (1) Where an agreement has been entered into for the acquisition by a bank (herein referred to as the "transferee bank") of the undertaking of another bank, whether or not a bank to which the provisions of this Act apply (herein referred to as the "transferor bank") the transferee bank may, for the purpose of effecting the transfer to, and the vesting in, the transferee bank of the undertaking, make a written application to the Minister, notice of which shall be published in the *Gazette* in any case where the Minister so directs.

(2) Upon the making of such an application, the Minister may, if he thinks fit, make an Order (in this Part called a "Bank Undertaking Vesting Order"), transferring to and vesting in the transferee bank the undertaking, as from the appointed day, and thereupon all such existing property, rights, liabilities and obligations as are intended by the agreement to be transferred and vested shall, by virtue of this Act, and without further assurance be transferred to, and shall vest in, the transferee bank to the intent that such bank shall succeed to the whole or such part of the undertaking of the transferor bank as is contemplated by the agreement.

(3) No transfer or vesting effected by a Bank Undertaking Vesting Order shall—

- (a) operate as a breach of covenant or condition against alienation;
- (b) give rise to any forfeiture;
- (c) invalidate or discharge any contract or security.

(4) A Bank Undertaking Vesting Order may, in the discretion of the Minister, provide notwithstanding any other

law for the carry forward by the transferee bank and set off for corporation tax purposes of such of the losses of the transferor bank as may be specified, as if the undertaking of the transferor bank had not been permanently discontinued on the appointed day and a new undertaking had been then set up and commenced by the transferee bank.

Supple-
mentary
provisions
as to
transfers

32. (1) Without prejudice to the generality of section 31, the effect of a Bank Undertaking Vesting Order as regards the undertaking thereby transferred shall be that on and from the appointed day—

(a) every existing contract to which the transferor bank was a party, whether in writing or not, shall be construed and have effect as if—

(i) the transferee bank had been a party thereto instead of the transferor bank;

(ii) for any reference (however worded express or implied) to the transferor bank there were substituted, as respects anything falling to be done on or after the appointed day, a reference to the transferee bank; and

(iii) any reference (however worded and whether express or implied) to the directors or to any director, officer, clerk or servant of the transferor bank were, as respects anything falling to be done on or after the appointed day, a reference (as the case may require) to the directors of the transferee bank or to

such director, officer, clerk or servant of the transferee bank as the transferee bank may appoint or, in default of appointment, to the director, officer, clerk or servant of the transferee bank who corresponds as nearly as may be to the first mentioned director, officer, clerk or servant;

- (b) any account between the transferor bank and a customer shall become an account between the transferee bank and the customer;
- (c) any existing instruction, direction, mandate, power of attorney or consent given to the transferor bank shall have effect as if given to the transferee bank;
- (d) any negotiable instrument or order for payment of money which is expressed to be drawn on, or given to or accepted or endorsed by the transferor bank, or payable to any of its places of business, shall have effect as if it had been drawn on, or given to or accepted or endorsed by the transferee bank, or payable at the same place of business of the transferee bank;
- (e) any security transferred to the transferee bank by a Bank Undertaking Vesting Order that immediately before the appointed day was held by the transferor bank as security for the payment or discharge of

any debt or liability or obligation (whether present or future, actual or contingent) shall, be held by, and be available to, the transferee bank as security for the payment or discharge of such debt or liability or obligation; and any such security which extends to future advances or liabilities shall, on and from the appointed day, be held by, and be available to, the transferee bank as security for future advances by, and future liabilities to, the transferee bank in the same manner in all respects as future advances by, or liabilities to, the transferor bank were secured thereby immediately before the appointed day;

- (f) any judgment or award obtained by or against the transferor bank and not fully satisfied before the appointed day shall be enforceable by or against the transferee bank;
- (g) unless the agreement provides to the contrary, any officer, clerk or servant employed by the transferor bank immediately before the appointed day shall become an officer, clerk or servant (as the case may be) of the transferee bank on terms and conditions not less favourable than those on which he was so employed immediately before the appointed day, and such employment with the transferor and transferee bank respectively shall be deemed for all purposes to be a single continuing employment, save

that no director, secretary or auditor of the transferor bank shall by virtue only of a Bank Undertaking Vesting Order become a director, secretary or auditor (as the case may be) of the transferee bank.

(2) The provisions of subparagraphs (ii) and (iii) of paragraph (a) of subsection (1) shall apply to any statutory provision, to any provision of any existing contract to which the transferor bank was not a party and to any provision of any other existing document (not being a contract or a will) as they apply in relation to a contract to which paragraph (a) of subsection (1) applies.

(3) Any property or rights transferred to, and vested in, the transferee bank which immediately before the appointed day were held by the transferor bank, whether alone or jointly with any other person—

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

shall, on and from the appointed day, be held by the transferee bank, whether alone or jointly with such other person,

in the same capacity upon the trusts, and with and subject to the powers, provisions, liabilities and obligations, applicable thereto respectively.

Transfers
to be sub-
ject to
stamp duty

Ch. 33. No. 4. 33. The transfer of, and vesting in, the transferee bank of an undertaking by a Bank Undertaking Vesting Order shall, unless exempted (either generally or in some particular case) by the Order, be subject to the provisions of the Stamp Duty Ordinance, as if the Order was, in each of the cases in which the duty is imposed on the several instruments specified in the Schedule to that Ordinance, an instrument between party and party within the contemplation of that Ordinance."

Passed in the House of Representatives this 26th day of June, 1970.

G. R. LATOUR

Clerk of the House

Passed in the Senate this 30th day of June, 1970.

J. E. CARTER

Clerk of the Senate