

CHAPTER 24:08

NETHERLANDS BANK OF RHODESIA LIMITED (PRIVATE) ACT

Act 18/1967.

AN ACT to confirm and give effect to the Agreement which provides for the assumption of all assets, liabilities, rights, obligations and all activities pertaining to the Rhodesian business of the Netherlands Bank of South Africa Limited by the Netherlands Bank of Rhodesia Limited, a banking company about to be incorporated in Rhodesia, and for matters incidental thereto.

[Date of commencement: 1st August, 1967.]

WHEREAS the Netherlands Bank of South Africa Limited (hereinafter called “the South African Bank”) is a company incorporated with limited liability under the laws in force in the Republic of South Africa, having its registered office in Netherlands Bank Building, corner Church and Andries Streets, Pretoria, and carrying on business as a registered commercial bank in Netherlands Bank Buildings, 81 Main Street, Johannesburg, and elsewhere in the said Republic;

AND WHEREAS the South African Bank is registered in Rhodesia in terms of the Banking Act, 1964 (No. 65 of 1964) as a commercial bank, and has for many years carried on business therein as such in all its forms at Anlaby House, Angwa Street, Salisbury, and elsewhere in Rhodesia, in the course of which it has acquired and incurred and presently has many rights, assets, liabilities, obligations and other interests;

AND WHEREAS the Netherlands Bank of Rhodesia Limited (hereinafter called “the Rhodesian Bank”) is a company about to be incorporated with limited liability under the laws in force in Rhodesia and to be registered as a commercial bank under the Banking Act aforesaid for the purpose inter alia of acquiring and developing the Rhodesian business of the South African Bank;

AND WHEREAS the South African Bank has entered into an Agreement with the Trustee of the Rhodesian Bank to be formed which is set out in the Schedule;

AND WHEREAS under the Roman-Dutch Law it is doubtful whether the Rhodesian Bank can assume the assets, liabilities, rights, obligations and the business of the South African Bank in terms of the said Agreement without obtaining the consent to this said assumption of all its customers and additionally or alternatively other persons with whom it has entered into business relations;

AND WHEREAS in any event it is impracticable to obtain the consent of all the South African Bank's customers and additionally or alternatively such other persons who will or might be affected by the implementation of the said Agreement;

AND WHEREAS it is desirable to achieve certainty as to the rights and liabilities assumed by the Rhodesian Bank;

AND WHEREAS the only practicable method by which the desired certainty can be achieved is by legislative enactment;

AND WHEREAS the assets of the Rhodesian Bank when it has been incorporated and the Vendor's Agreement has been carried out will be more than adequate to meet all the liabilities which will be assumed by it thereunder;

NOW, THEREFORE, be it enacted as follows—

1 Short title

This Act may be cited as the Netherlands Bank of Rhodesia Limited (Private) Act [*Chapter 24:08*].

2 Interpretation

In this Act—

“Rhodesian Bank” means the Netherlands Bank of Rhodesia Limited, about to be incorporated;

“Rhodesian business”, in relation to the South African Bank, means the business of a commercial bank carried on in and from Rhodesia by the South African Bank;

“South African Bank” means the Netherlands Bank of South Africa Limited.

3 Confirmation of the Agreement

From the 1st August, 1967—

(a) all the assets and all the liabilities of the Rhodesian business of the South African Bank shall vest in and become binding upon the Rhodesian Bank;

(b) the Rhodesian Bank shall have the same rights and be subject to the same obligations in respect of the said assets and liabilities as were immediately before the 1st August, 1967, possessed by or binding upon the South African Bank;

- (c) all agreements, appointments, transactions and documents made, entered into, drawn or executed by, with or in favour of the South African Bank in respect of or arising from its Rhodesian business in force immediately before the 1st August, 1967, shall remain of full force and effect and shall be construed for all purposes as if they had been made, entered into, drawn or executed by, with or in favour of the Rhodesian Bank;
- (d) any mortgage bond, pledge, guarantee or other instrument to secure future advances, facilities or services by the South African Bank, in respect of or arising from the Rhodesian business of the South African Bank, which was in force immediately before the 1st August, 1967, shall remain of full force and effect and shall be construed as a mortgage bond, pledge, guarantee or instrument given to or in favour of the Rhodesian Bank as security for future advances, facilities or services by the Rhodesian Bank;
- and the Agreement between the South African Bank and the Rhodesian Bank, which was signed on the 21st November, 1966, and which is set out in the Schedule, is hereby ratified and confirmed.

4 Recording of transfer of title, etc., to Rhodesian Bank

The Registrar of Companies, the Registrar of Deeds and every officer in charge of an office in which is registered any title to property belonging to or any mortgage bond or other right in favour of or any appointment of or by or in which has been issued any licence to or in favour of the South African Bank in respect of its Rhodesian business shall upon the production to him of any relevant deed, bond, certificate, letter of appointment, licence or other document make such endorsement thereon and effect such alteration in his registers as may be necessary to record the transfer thereof and of any rights thereunder to the Rhodesian Bank and no transfer fees, stamp duty, registration fees, licence fees or other charges shall be payable in respect of the transfer or any endorsement or alterations so made to give effect thereto.

5 Preservation of rights not affected by this Act

Save as is otherwise expressly provided in this Act, the provisions of this Act shall not derogate from the rights of any creditor of the South African Bank.

SCHEDULE (Preamble and Section 3)

VENDOR'S AGREEMENT

Memorandum of Agreement made and entered into by and between

NETHERLANDS BANK OF SOUTH AFRICA LIMITED herein duly represented by CAREL ANTON DE BRAAL in his capacity as GENERAL MANAGER thereto duly authorized and empowered by and in terms of a Resolution passed at Johannesburg on the 28th day of October, 1966, a certified copy whereof is hereto annexed marked "A" (hereinafter referred to as the SELLER) of the one part; and

GEORGE HARRY MARCUS BEAK

in his capacity as attorney, agent or trustee for a Company about to be formed and registered under the style or name of

NETHERLANDS BANK OF RHODESIA LIMITED (hereinafter referred to as the PURCHASER) of the other part;

WITNESSETH:

THAT WHEREAS the SELLER has carried on and is at present carrying on the business of Bankers in all its Branches in Rhodesia and elsewhere;

AND WHEREAS for divers reasons it is desirable and has been agreed that the part of the said Banker's business and all business incidental thereto of the SELLER presently carried on in Rhodesia together with all business arising in or conducted from the said territory by the SELLER, including all property thereof in Rhodesia, shall be sold to and acquired by, conveyed to and taken over by the PURCHASER which shall also assume responsibility for carrying out all obligations and meeting all liabilities of the SELLER, in respect of the business sold in terms of this Agreement, for the purpose of carrying on the said business in the said territory and such other places as the PURCHASER may hereafter decide;

AND WHEREAS it is desirable and has been agreed that for the said purposes *inter alia* the PURCHASER shall be incorporated and registered in Rhodesia as a Company with limited liability and as a Commercial Bank in terms of the statutory provisions there applicable with the objects set out in and in terms of a Memorandum and Articles of Association which for the time being have been settled to the satisfaction of the SELLER and the PURCHASER respectively and which has included in the Memorandum of Association, *inter alia*, an object and power enabling the said Company when registered to ratify and adopt with or without modification the provisions of this Agreement;

AND WHEREAS it is desirable that prior to the registration of the PURCHASER as a Company the terms and conditions of the Agreement between the said parties shall be determined and recorded in writing;

NOW THEREFORE it is agreed between the parties hereto as follows:

- (1) The SELLER sells to the PURCHASER which purchases subject to the terms and conditions of this Agreement the whole of the Banking Business (including all property, rights and assets thereof) as presently carried on and possessed by the SELLER in Rhodesia (hereinafter referred to as the said territory) and hereinafter referred to as the said business, provided that the PURCHASER shall assume responsibility for and undertake to carry out all the obligations and meet all the liabilities of the SELLER as undertaken in respect of and arising from the said business, which are disclosed by the books of the SELLER as audited per the 30th September, 1966 (hereinafter referred to as "the said books") and whether such obligations and liabilities shall be to the public, clients of the said business or howsoever otherwise arising, but excepting and providing that certain of the obligations, liabilities and responsibilities of the SELLER to the staff employed by the SELLER as at the effective date are not hereby taken over and are more fully dealt with in Clause 16 hereunder.
- (2) Without limiting or restricting the generality of the description of the said business sold to and the rights, liabilities and obligations taken over by the PURCHASER in terms of this Agreement the said business shall include and consist of all movable and immovable, corporeal and incorporeal property, rights, assets and all obligations and liabilities as specified in paragraph (1) above of the said banking business of the SELLER and all business activities connected therewith, arising therefrom and incidental thereto, conducted in and from the said territory.
- (3) The aforesaid property, rights, assets, obligations and liabilities comprising the said banking business shall be determined as reflected in the said books.

The SELLER warrants to the PURCHASER as follows:

- (i) that the said books are true and correct in all material respects and fairly represent the financial condition of the said business in Rhodesia as at 30th September, 1966;
 - (ii) that as at 30th September, 1966, there are no liabilities, absolute or contingent, arising out of or incidental to the said business other than those disclosed in the said books.
- Subject to the aforesaid warranties the PURCHASER purchases each and every part or portion of the property, claims, rights, obligations or anything sold or made over in terms of this Agreement from the SELLER on the understanding that all conditions or warranties whether express or implied by law or by the conduct of the parties to this Agreement, are excluded.
- (4) The PURCHASER indemnifies the SELLER and holds the SELLER covered against all claims, actions, proceedings, or demands, howsoever arising, and instituted by any person or corporation whatsoever and against all damages, costs and expenses whatsoever claimed against, suffered or incurred by the SELLER no matter how arising and whether any of the said possible liabilities covered by the said indemnity shall be presently outstanding or arise out of causes heretofore arising or which may hereafter arise, provided always that the same shall have reference to or arise out of the said business.
 - (5)(a) The effective date for the transfer of ownership of purchase price for the said business shall be £574 873, which amount includes a figure agreed upon between the SELLER and the PURCHASER for estimated profits before tax over the period from the 1st day of October, 1966, until the effective date.
 - (b) It is further hereby agreed that any difference in the amount of taxes payable over the period prior to the 30th September, 1966, in connexion with the said business, and the amount or amounts provided therefor by the SELLER in the said books as at that date will be for account of the SELLER. Any taxes due for the period as from 1st October, 1966, until the effective date are for account of the SELLER.
 - (c) The current accounts existing as between the Rhodesian section of the SELLER'S business and the sections thereof outside Rhodesia shall remain in operation and in force as normal accounts as between Correspondent Bankers and any balances shown as outstanding thereon in the said books as at the 30th September, 1966, shall not be included in the aforesaid purchase price, nor be settled by the payment thereof.
 - (6)(a) The effective date for the transfer of ownership of the rights and assets hereby sold to the PURCHASER, herein called "the effective date", shall be the date of the incorporation of the PURCHASER as a Company upon which date transfer, cession and delivery thereof to the PURCHASER shall be effected.
 - (b) Apart from the relative provisions contained in sub-clauses (a) and (b) of clause 5 hereof, the risk of and profit in and responsibility for the rights, assets, liabilities and obligations covered by this Agreement shall be regarded as having passed to the PURCHASER on and with effect from the 1st October, 1966, as from which date the PURCHASER shall, but merely as between the SELLER and the PURCHASER, be deemed to have taken over and to be conducting the whole of the said business and everything appertaining thereto for the account, profit and loss of the PURCHASER, but the SELLER shall until the effective date defined in sub-clause (a), carry on and administer the said business and everything appertaining thereto for and on behalf of the PURCHASER.

- The PURCHASER undertakes to carry out in the said territory for the period from the effective date until six months thereafter, all such work, business and obligations for and on behalf of the SELLER as the latter may from time to time request and the performance of which will not in PURCHASER'S opinion result in undue inconvenience or materially interfere with the conduct of its business, subject always to any subsidiary or ancillary Agreement being made in regard to remuneration, payment of expenses and other relevant matters as may from time to time be required.
- (7) The first one million (1 000 000) ordinary shares of 10s. (ten shillings) each of the PURCHASER shall immediately on its incorporation be subscribed in cash by and allotted to the SELLER and/or its nominee or nominees at a premium of 2s. 6d. (two shillings and sixpence) per share.
 - (8) Should there be any property, rights, undertakings, obligations or any other matters or things appertaining to the said business which cannot be conveyed and delivered or made over by the SELLER to the PURCHASER in terms of this Agreement the SELLER undertakes and agrees to give to and in favour of the PURCHASER such rights to the use thereof and/or to carry out its undertakings and obligations in respect thereof as the case may be to enable the provisions of this Agreement to be put into effect.
 - (9)(a) The SELLER shall when required notify the Registrar of Banks in Rhodesia under section 17 of the Banking Act, 1964, of this Agreement and submit to him the documents required thereby;
 - (b) The SELLER shall do all things necessary to enable the PURCHASER to apply to the Registrar of Banks for registration as a Commercial Bank in terms of section 6 of the Banking Act, 1964.
 - (10) The SELLER undertakes upon receipt of the written request of the PURCHASER at any time to furnish all such details and information and to give all such further assistance as the PURCHASER may require in regard to the business and undertakings, property and all rights, obligations and liabilities of the SELLER falling within the terms of this Agreement.
 - (11) The SELLER shall give to and in favour of the PURCHASER such Power of Attorney, assignment of rights of action or other adequate and proper authority as the PURCHASER may require to enable it in its own name and on its own account to take action upon and to enforce any claim or right of action whatsoever arising from or in connexion with anything acquired by the PURCHASER in terms of this Agreement.
 - (12) Payments of amounts and delivery of share scrip due in terms of this Agreement shall be effected at the office of the SELLER at Anlaby House, Angwa Street, Salisbury, Rhodesia, and delivery by the SELLER to the PURCHASER of securities, scrip, all documents and completion of all formalities necessary for the carrying out of the provisions of this Agreement and incidental thereto shall be effected at such Branches of the said Banking Business in Rhodesia as the PURCHASER may indicate, unless otherwise arranged.
 - (13) In so far as for the purpose of carrying out this Agreement transfer of any property and cession of rights and delegation of obligations requiring formal documents to be drawn and registered or specially prepared the preparation thereof shall be done by Attorneys, Notaries and Conveyancers nominated by the SELLER.
 - (14) Upon the proper transfer of title to all property or rights and of the responsibility for obligations purchased or acquired in terms of this Agreement being effected the PURCHASER shall give to the SELLER upon its request such receipt or receipts therefor in such form as the SELLER may require.
 - (15) The PURCHASER makes no representation and gives no warranty or undertaking of any kind that the shares in its nominal capital or any of them shall be marketable or capable of being dealt in upon any particular Stock Exchange or Bourse.
 - (16) Subject to the consent of the personnel affected all the staff employed by the SELLER in the said territory as at the effective date, shall either be seconded for the time being by the SELLER to the PURCHASER or be taken over by the PURCHASER in its employ and any such employee or employees shall retain the same or similar rights and benefits as were heretofore enjoyed by them and remain subject to the same or similar obligations and liabilities as were heretofore applicable to them.
 - (17) All costs incurred in the incorporation of the PURCHASER as a Company with limited liability and of the registration of the PURCHASER as a Commercial Bank shall be paid by the PURCHASER. The cost of delivering, transferring and making over all property, rights and obligations in terms of this Agreement from the SELLER to the PURCHASER and all other incidental costs and expenses reasonably incurred in and about the carrying out of the provisions of this Agreement shall be borne by the SELLER and the PURCHASER in equal shares.
 - (18) The Purchasing Company shall ratify and adopt this Agreement with or without modification within a period of six (6) months after it shall be entitled to commence business or within such further period as may be mutually agreed.
 - (19) When this Agreement has been ratified and adopted with or without modification by the said Company about to be incorporated or upon the withdrawal of the SELLER in terms of Clause 21 hereof or of the PURCHASER in terms of Clause 22 hereof before such ratification or adoption all liability and responsibility, if any, of the said

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in his capacity as attorney, agent or trustee of the said Company shall *ipso facto* terminate.

- (20) If the performance of this Agreement or of any part thereof should be rendered impossible by reason of some force, power or activity outside or beyond the control of both parties hereto no right or claim to damages or other remedy or action shall accrue to one or either party hereto against the other; and notwithstanding any other provision herein contained in so far as one or other party hereto may be prevented by *force majeure* or other agency or cause outside its control from carrying out or giving effect to the provisions of this Agreement or any of them such party so prevented from acting hereby nominates, constitutes and appoints the other party hereto as its attorney, agent or trustee on its behalf and for it to do all that may be necessary to carry out its undertakings and obligations in terms of this Agreement just as if such party were itself acting therein.
- (21) If for any reason the PURCHASER is unable, within a period of six months from the date of signing of this Agreement, to complete its registration as a Company and as a Commercial Bank under the laws of Rhodesia, or if after the completion of the aforesaid registration the PURCHASER fails to comply with the terms and conditions of this Agreement or any of them and neglects to conform with a written demand within a period of thirty (30) days after the receipt of such demand to the PURCHASER addressed to the Purchaser Company at its registered address, to rectify such failure or failures, the SELLER shall be entitled to withdraw from this Agreement by written notice sent by registered mail, to the said attorney, agent or trustee addressed to him in his aforesaid capacity at c/o Netherlands Bank of South Africa Limited, Anlaby House, Angwa Street, Salisbury, Rhodesia, if the Purchaser Company has failed to complete its registration as a Company incorporated with limited liability, or otherwise, where such registration has taken place, then to the said Company at its registered address.
- (22) If the SELLER fails to comply with the terms and conditions of this Agreement or any of them and neglects to conform with a written demand within a period of thirty (30) days after the receipt of such demand to the SELLER addressed to the SELLER at its registered address, to rectify such failure or failures, the PURCHASER shall be entitled to withdraw from this Agreement by written notice sent by registered mail to the SELLER at its registered address.
- (23) Notwithstanding any provisions of this Agreement it shall be subject to, conditional upon and come into operation only upon ratification and adoption with or without modification by the said Company about to be incorporated.
- (24) This Agreement shall in all respects be governed by and interpreted in accordance with the laws of Rhodesia.

THUS DONE AND SIGNED AT JOHANNESBURG on this the sixteenth day of November, 1966.

Witnesses:

1. B. van der Velde.
2. R. van Niekerk.

C. A. DE BRAAL,
for *Netherlands Bank of South
Africa Limited.*

THUS DONE AND SIGNED AT SALISBURY on this the twenty-first day of November, 1966.

Witnesses:

1. E. H. T. Thompson.
- S. D. W. Jones.

G. H. M. BEAK,
for *Netherlands Bank of
Rhodesia Limited*
(prior to incorporation).