

1895.  
NEW ZEALAND.

AGREEMENT BETWEEN THE COLONIAL BANK OF NEW  
ZEALAND AND THE BANK OF NEW ZEALAND

(COPY OF THE).

*Laid on the table in accordance with the provisions of "The Bank of New Zealand and Banking Act, 1895."*

[Certified as a correct copy of the original agreement.—JAS. B. HEYWOOD, Secretary to the Treasury, 18th October, 1895.]

AN AGREEMENT made the eighteenth day of October, 1895, between the Colonial Bank of New Zealand (hereinafter called "the selling bank") of the one part and the Bank of New Zealand (hereinafter called "the purchasing bank") of the other part, whereby it is agreed as follows:—

1. The selling bank agrees to sell, and the purchasing bank agrees to purchase, the business and assets of the selling bank, except the uncalled capital and reserve liability of shareholders and the assets and debts mentioned in a certain list, marked "D," which has been prepared, and is identified by being signed by three directors of the selling bank and the purchasing bank respectively, and except also as hereinafter mentioned.

2. The business and assets of the selling bank, as disclosed in its balance-sheet hereinafter mentioned, a copy of which balance-sheet has been signed by such directors as aforesaid, shall, for the purposes of this agreement, be considered as the basis of the contract entered into between the said parties.

3. For the purposes of this agreement the face value of the consideration is estimated at £461,211; but from this sum shall be deducted and retained by the purchasing bank the sum of £327,305, as security pending the taking-over, realisation, or adjustment of the accounts in the "B" and "C" lists respectively, as hereinafter mentioned. The sum of £133,906 shall be paid in cash by the purchasing bank to the selling bank on the ratification and approval of this agreement, as hereinafter mentioned.

4. Three lists of debts and accounts have been prepared, and marked respectively "A," "B," and "C" lists, which are identified by being signed by such directors as aforesaid.

5. The debts and accounts mentioned in the "A" list shall be taken over by the purchasing bank as of the value set opposite to the same respectively in such list.

6. The said sum of £327,305, part of the said purchase-money, represents sums in the right-hand columns of the said "B" and "C" lists as marginal sums to be held by way of security pending the taking-over, realisation, or adjustment of the accounts in the said "B" and "C" lists respectively, and shall, subject to the provisions hereinafter contained, be retained by the purchasing bank for such purpose.

7. The assets and debts mentioned in the said "D" list shall not pass under this agreement, or become the property of the purchasing bank, but shall remain the property of the selling bank.

8. The business and the assets hereby agreed to be sold shall be retained by the selling bank up to the date hereinafter fixed for the transfer of the said business, and as from the 31st day of May last in London, and as from the 31st day of August last in New Zealand, up to such date so fixed the selling bank shall be deemed to have been and to be carrying on business on behalf of the purchasing bank, and shall accordingly account to the purchasing bank for all benefits received, and be indemnified by the purchasing bank against all liabilities, obligations, and expenses (unless arising from the wrongful or negligent act of the selling bank or its officers) incurred in carrying on the business of the bank. All rates, taxes, and fire insurance premiums in respect of the premises and assets hereby agreed to be sold up to the said 31st day of August last shall be discharged by the selling bank, and thereafter by the purchasing bank, and all such rates, taxes, and premiums shall, if necessary, be apportioned.

9. The purchasing bank shall manage, realise, and adjust the accounts mentioned in the "B" and "C" lists respectively under the supervision of the selling bank, to whom monthly returns shall be furnished by the purchasing bank, and no increase of indebtedness shall be allowed in respect of any such accounts, except by mutual agreement between the selling bank and the purchasing bank; but if any such indebtedness is increased by mutual consent the selling bank, if required, shall provide a further guarantee to secure such increased indebtedness; and, if the purchasing bank shall allow any increase which may not be so mutually agreed upon, such increase of indebtedness shall be at the sole risk of the purchasing bank.

10. The purchasing bank shall be entitled to apply any surplus arising from any of the said marginal sums in the "B" list in aid of any deficiency which may arise in any other accounts in such list until the whole of such accounts in such list shall have been taken over, liquidated, or adjusted. There shall be no liability on the part of the selling bank to the purchasing bank beyond the said marginal sums in respect of the said accounts or any of them.

11. If the selling bank shall consider that any steps or proceedings are necessary for the protection of the said accounts or any of them in the said "B" and "C" lists respectively, the purchasing bank shall, on receiving written instructions from the selling bank, take such steps and proceedings, but at the risk and expense of the selling bank.

12. If the purchasing bank shall represent to the selling bank that any account or accounts in the "B" list is or are in its opinion becoming bad, or in the event of a customer failing to pay interest on any such account, the purchasing bank may require that such account or accounts shall be closed and realised after one month's notice to the selling bank, but the selling bank shall have the option of withdrawing such account from the assets hereby sold on paying to the purchasing bank the amount then due thereon, and thereupon the amount standing opposite such account in the right-hand column shall be paid to the selling bank, and in the event of the selling bank declining to exercise such option within such month, then the purchasing bank may deal with the same in such manner as it thinks fit.

13. If at any time on the rendering of the monthly accounts or returns aforesaid it shall be found that the total amounts standing in the right-hand column of the "B" list shall exceed the total amount of debts to which they stand opposite in such list, then, and so often as the same shall occur, such excess of the total amount in such right-hand column shall be paid to the selling bank.

14. On the expiration of six months from the date of the transfer of the said business, and on the expiration of every six months thereafter, a statement shall be prepared by the purchasing bank and furnished to the selling bank of such accounts in the "B" and "C" lists as may have been taken over by the purchasing bank, liquidated, or adjusted, as also a statement of the position of the amounts in the said right-hand column of the "B" list.

15. An equitable adjustment shall be made of the interest due and to be allowed to the selling bank on any amount standing in the said right-hand column of the said "B" list which may ultimately be found to be in excess of the amount necessary for securing the debts mentioned in the said "B" list, and the rate of such interest shall be based on the current rates of interest for fixed deposits for twelve months paid by the purchasing bank.

16. After the expiration of two years from the 31st day of August last the selling bank may require the purchasing bank to pay over to the selling bank the whole of the amounts in the right-hand column of the said "B" list, and surrender all securities held in respect of the debts or accounts mentioned in such list, on payment of the total amount of the balance then owing on such debts or accounts; but the parties hereto may arrange from time to time to continue the liquidation of any of the accounts mentioned in the said "B" list for a further term. In the absence of any such arrangement the purchasing bank may proceed to liquidate all or any of the accounts mentioned in the said "B" list.

17. The purchasing bank shall not, so long as it retains any part of the said marginal sums as security as aforesaid, realise or discharge (except on payment) any security held by the purchasing bank for or in respect of such accounts, nor realise or compound for such accounts, without the consent of the selling bank.

18. With respect to the accounts appearing in the said "C" list, the selling bank shall indemnify and protect the purchasing bank against any loss or deficiency on the realisation of such accounts respectively, provided that the purchasing bank shall, immediately on this contract taking effect, write off the amounts standing in the right-hand column of the "C" list, and credit the respective accounts in such list with the amounts so written off. The purchasing bank shall have the option, within three months from the date of this contract taking effect, to take over all or any of the said accounts in the said "C" list, and in the event of the purchasing bank deciding to take over any such account the selling bank shall stand released from its agreement to indemnify and protect as aforesaid. The selling bank may at any time require the purchasing bank to elect whether such bank will take over all or any of the accounts in the "C" list or reject the same, and in the event of the purchasing bank refusing to take over all or any of such accounts the selling bank shall be entitled to take over the accounts so rejected, with all securities in respect thereof, on payment of the amount owing on such accounts or account respectively, or require the purchasing bank to realise or liquidate the account or accounts which the purchasing bank refuses to take over, and any deficiency arising on such liquidation shall be made good by the selling bank.

19. The assets agreed to be sold as aforesaid shall be subject to all tenancies, liens, and equities subsisting or affecting the same, or any part thereof.

20. The purchasing bank shall pay, satisfy, and discharge all deposits, bank-notes, credit balances, bills, drafts, letters of credit, and circular notes for or in respect of which the selling bank shall be liable, and which are disclosed in the selling bank's books at the time appointed for the transfer of the business of the selling bank, and shall also pay and satisfy all liabilities and obligations of the selling bank incurred or undertaken in carrying on its ordinary business, and

which shall be disclosed in the books of such bank, but, nevertheless, without prejudice to the provision contained in the next clause; and also will, from time to time, pay the rents payable, and observe and perform the covenants and conditions to be fulfilled or observed by the selling bank under any lease or tenancy held by the selling bank, and agreed to be sold by it; but nothing in this clause contained shall render the purchasing bank liable in respect of any contract entered into by the selling bank with any of its officers or servants, or for any loss arising from the improper conduct or neglect of any of such officers or servants.

21. Notwithstanding anything contained in the last-preceding clause, the selling bank shall guarantee the purchasing bank against all loss which it may sustain in respect of any letters of credit granted by the selling bank prior to the time of the said business being transferred; but the purchasing bank shall elect within fourteen days thereafter whether it will stop or continue any credit in respect of such letters, or any of them, and after the expiration of such fourteen days the liability of the selling bank under this clause shall cease and determine in respect of any operation thereafter on any such letters of credit.

22. A list of the officers and servants of the selling bank shall be furnished to the purchasing bank, and their names shall be placed on such bank's register of applications for employment, and as many of such officers and servants shall be taken into the employ of such last-mentioned bank as the exigencies or interests thereof may require.

23. The purchasing bank shall be entitled at any time within six months from the time appointed for the transfer of the said business to reject any securities which it may consider contain onerous conditions.

24. The selling bank shall, if a written request in that behalf be made to it by the purchasing bank within nine months from the date appointed for the transfer of the said business at the cost and charges of the selling bank, complete any incomplete security (according to the nature of the security intended) for any of the assets sold and purchased as aforesaid, and in the event of the selling bank neglecting for a reasonable time to complete such security the purchasing bank may do so at the cost of the selling bank.

25. The selling bank shall guarantee—

- (a.) That the balance-sheet made up to the 31st day of May last in London, and up to the 31st day of August last in New Zealand, contains a true statement of the position of the selling bank at those dates, except as any variation thereof appears in this agreement.
- (b.) That all items (not included in the "A," "B," and "C" lists, and any securities held for the accounts therein) submitted to the purchasing bank during the negotiations for the sale and purchase were of the value which they were represented to be, but the landed property and bank premises appearing in such balance-sheet shall be taken at the values appearing in the said balance-sheet. The furniture and stationery mentioned in the said balance-sheet, after deducting an allowance in respect of working the business in London, has been assessed at £6,250.
- (c.) The accounts in the "A" and "B" lists, taken over by the purchasing bank, which have not in the meantime been paid off or reduced, shall, at the time appointed for the transfer of the business, be in as safe or substantially good position, having regard to the nature of the accounts and the circumstances of the debtors, as they were respectively in on the 31st day of August last.
- (d.) That the items shown in the balance-sheet as being *in transitu* between the various branches of the selling bank were of the values which they were represented to be in such balance-sheet.
- (e.) If any account taken over by the purchasing bank shall be wholly or partly secured by shares of the selling bank, such last-mentioned bank shall make good any deficiency which may arise in realising any such security to the extent to which such security was estimated in taking over such accounts, or any of them.
- (f.) That the selling bank will, if required by the purchasing bank within six months from the time when this contract takes effect, make good any defect in title to all or any of the assets sold which have been represented to consist of freehold land belonging to such bank as its own property, and not held by way of security only, and, as to leasehold properties, that all rents have been paid and all covenants performed in respect thereof up to the 31st of August last.

If the selling bank is unable or unwilling to make good any such defect in title within a reasonable time after being so requested so to do as aforesaid, compensation shall be allowed to the purchasing bank for any deficiency in value of any freehold property prejudicially affected by any such defect in title, such compensation to be settled by arbitration in case of disagreement between the parties hereto as to the amount thereof.

26. Agency work in connection with the liquidation of the selling bank shall be undertaken for such bank by the purchasing bank free of expense, except such charges as the purchasing bank may actually pay in respect thereof, but such last-mentioned bank shall not be under any obligation to carry out any agency work which it may consider detrimental to its own business.

27. There shall be excepted from the said contract for sale, the share-register, transfer-books, board minute-books, transfers of shares, and other documents relating to the ownership of shares in the selling bank, and also its seal, all of which shall remain the property of the selling bank. All other books of the selling bank shall become the property of the purchasing bank; but, until the dissolution of the selling bank, the purchasing bank shall produce and show, at such times and to such persons as the selling bank shall from time to time reasonably require, such books, documents, and papers of the selling bank passing to the purchasing bank; but the selling bank shall pay any actual outlay occasioned by such production.

28. It is agreed that the selling bank shall guarantee the due payment of all amounts payable under or in respect of any security mentioned in the memorandum at the foot of the said "C" list as being held by the purchasing bank, and given or executed by any person or company whose name appears as a debtor in the said "C" list; but the said selling bank shall be entitled at any time to pay off and take a transfer of all or any of the said securities.

29. Subject to the payment of the said sum hereinbefore agreed to be paid in cash, the time or date appointed for the transfer of the business of the selling bank shall be the second Monday after the ratification and approval of this agreement, as provided by "The Bank of New Zealand and Banking Act, 1895."

30. If any difference shall arise between the selling bank and the purchasing bank touching these presents, or the construction thereof, or any clause or thing herein contained, or any matter in any way connected with these presents, or the rights, duties, and liabilities of either party in connection with the premises, then, and in either or any such case, the matter in difference shall be referred to two arbitrators, one to be appointed by each of the parties in difference, or by an umpire to be appointed by the said arbitrators.

31. The expression "the selling bank," or any words importing the same meaning, shall extend to and include the liquidator or liquidators for the time being of the selling bank.

32. This agreement for sale and purchase as aforesaid is conditional upon—

(a.) The subsequent ratification thereof by resolution passed by the proprietors or shareholders of the selling bank in the manner provided by "The Bank of New Zealand and Banking Act, 1895"; and

(b.) The approval of the Parliament of New Zealand, to be signified as prescribed in the last-mentioned Act.

In witness whereof the selling bank and purchasing bank have caused their respective common seals to be affixed to this agreement, written on fifteen sheets of paper, each sheet of which has been signed by three directors of such banks respectively the day and year firstly hereinbefore written.

The common seal of the Colonial Bank of New Zealand was hereunto affixed by authority of the board of directors of such bank, in the presence of

H. MACKENZIE,  
General Manager.

GEO. McLEAN.  
WILLIAM H. REYNOLDS.  
W. DOWNIE STEWART.

The common seal of the Bank of New Zealand was hereunto affixed by authority of the board of directors of such bank, in the presence of—

C. G. ANDREWS,  
Acting General Manager.

W. WATSON.  
WALTER W. JOHNSTON.  
WM. BOOTH.

Directors.