

ACT NO. 21 OF 2024

I assent.

RATU N. T. LALABALAVU
President

[6th December 2024]

AN ACT

TO PROVIDE FOR THE TRANSFER TO BSP FINANCIAL GROUP (FIJI) PTE LIMITED OF THE UNDERTAKING OF BSP FINANCIAL GROUP LIMITED IN FIJI AND FOR RELATED PURPOSES

ENACTED by the Parliament of the Republic of Fiji—

PART 1 — PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the BSP Fiji Act 2024.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2.—(1) 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;

“banking business” has the meaning given to it in the Banking Act 1995;

“BSP” means BSP Financial Group Limited, a company incorporated in accordance with the laws of Papua New Guinea under the Companies Act 1997 of Papua New Guinea and registered in Fiji as a foreign company in accordance with the laws of Fiji under the Companies Act 2015;

“BSP business” means the banking business conducted by BSP in or from Fiji immediately before the appointed time and excludes for all purposes the interests of BSP in Fiji as set out in the Schedule;

“BSP capital” means the assigned capital, asset reserves, capital adequacy reserves and retained earnings of BSP in the BSP business immediately before the appointed time;

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

“BSP Fiji” means BSP Financial Group (Fiji) Pte Limited;

“BSP liabilities” means all liabilities, whether actual, contingent or prospective to which BSP is subject in connection with or in relation to the BSP business;

“BSP property” means all property and assets of every description of BSP used or held in connection with or in relation to the BSP business including BSP’s shares in Suva Central Pte Limited;

“BSP undertaking” means the BSP business, BSP capital, all BSP property and all BSP liabilities;

“customer” includes any person, proprietary unit, board, commission, committee, instrumentality or government with whom BSP conducted a banking or other business relationship immediately before the appointed time;

“document” means anything in which information of any description is recorded or stored;

“effective day” means the date specified by the Minister by notice published in the Gazette;

“instrument” includes—

- (a) a document or instrument of any form or kind, including a security that creates, evidences, modifies, or extinguishes rights, interests, or liabilities, or would do so if it, or a copy of it, were lodged, filed, notified or registered under any written law;
- (b) a judgment, order, or process of a court or tribunal; and
- (c) an undertaking, communication, notice, instruction, order, direction, mandate, authority, negotiable instrument, order for payment of money, register, and record;

“land” includes any estate, interest or right (whether legal or equitable) in, over or under land;

“liabilities” means duties and obligations of every description;

“Minister” means the Minister responsible for finance;

“property” means property as defined in section 2 of the Interpretation Act 1967;

“Registrar” means the person holding office pursuant to any written law where the term is contained and defined;

“security” includes a mortgage (whether legal or equitable), charge, debenture, bill of exchange, bill of sale, promissory note, guarantee, lien, deed, pledge, security interest as defined in the Personal Property Securities Act 2017 or other means of securing the payment of a debt, whether present or future or the discharge of an obligation or liability, whether actual or contingent, and all such instruments created by and brought into existence by BSP before the appointed time evidencing the same;

“tax law” means any written law relating to taxation including the Income Tax Act 2015, Value Added Tax Act 1991, Customs Act 1986, Customs Tariff Act 1986, and Tax Administration Act 2009; and

“written law” means any written law as defined in section 2 of the Interpretation Act 1967 and includes the Constitution of the Republic of Fiji and all subsequent amendments and modification to such written law.

(2) Subject to subsections (3) or (4), where—

(a) any written law other than this Act and the Bank of South Pacific Act 2011; or

(b) any instrument made or executed,

contains any reference express or implied to BSP, such reference must, on and after the appointed time and except where the context otherwise requires, be read, construed and have effect as if it was a reference to BSP Fiji.

(3) Notwithstanding anything in the preceding subsection where in pursuance thereof, a reference to BSP in any instrument constituting or relating to any pension scheme or provident fund of BSP in force immediately before the appointed time is to be read, construed and have effect as a reference to BSP Fiji, for the purpose of ascertaining and calculating the right to benefit thereunder, service or employment with BSP before the appointed time is to be taken into account as if it were service or employment with BSP Fiji, but the coming into force of this section does not of itself give rise to any claim to benefit under any such scheme or fund or operate to cause a person to become a member of another pension scheme or provident fund.

(4) Without prejudice to the generality of subsection (2), whereby any order of the court or by any trust deed, settlement, covenant or agreement or where by any will whether made or executed before, on or after the appointed time, BSP (whether alone or with any person) was or is granted letters of administration or probate or appointed trustee, executor, guardian or in any other fiduciary capacity, such order, trust deed, settlement, covenant, agreement or will does not fail by reason of anything in this Act but is, as from the appointed time, to be read and construed and have effect as if, for any reference therein to BSP, there was substituted a reference to BSP Fiji.

(5) Subject to this section, any act or omission by BSP before the appointed time in relation to—

- (a) any customer of the BSP business;
- (b) BSP property;
- (c) the BSP undertaking;
- (d) any security; or
- (e) any other matter or thing,

is on and after the appointed time deemed to be an act or omission of BSP Fiji as the case may be, provided that this provision does not affect or otherwise modify the position between of BSP and BSP Fiji.

PART 2—VESTING OF BSP UNDERTAKING ETC IN BSP FIJI

Vesting of BSP undertaking in BSP Fiji

3.—(1) At the appointed time the BSP undertaking in Fiji is deemed by virtue of this Act to have been divested from BSP and vested in BSP Fiji absolutely.

(2) If a question arises as to whether any particular property, right, privilege, liability or obligation has been vested in BSP Fiji under subsection (1), a certificate signed by the Minister is conclusive evidence that the property, right, privilege, liability or obligation was or was not vested.

(3) The Minister may not give a certificate under subsection (2) without the written consent of the person for the time being discharging the functions of the Chief Executive Officer or any equivalent position of BSP Fiji.

Vesting of contracts, liabilities, etc

4.—(1) At the appointed time—

- (a) all instruments and BSP property whether or not recorded in an instrument (including without limitation all securities, contracts, agreements, conveyances, deeds, leases, licences and undertakings) entered into by or made with or given to or by or delivered to or by or addressed to BSP (whether alone or with any other person) in force is, on and after the appointed time, to the extent that they were at any time before that time, binding upon, enforceable by or against BSP, deemed to be binding and of full force and effect in every respect in favour of or against BSP Fiji as fully and effectually as if, instead of BSP, BSP Fiji had been a party to them or bound by them or entitled to the benefit of them;

- (b) BSP is deemed to have paid up capital in BSP Fiji equivalent to BSP's assigned capital in the BSP business before the appointed time;
- (c) BSP Fiji is deemed to have the same capital adequacy reserves and retained earnings as BSP had in the BSP business immediately before the appointed time; and
- (d) BSP Fiji is deemed to have assumed all BSP liabilities (whether alone or with any other person) in force at the appointed time.

(2) All instruments brought into existence for the purpose of evidencing, recording or effecting the matters referred to in subsection (1) is exempt from taxes, duties and charges.

(3) Without limiting the generality of any other provision of this Act, the provisions of this Act have effect notwithstanding anything to the contrary contained in the State Acquisition of Lands Act 1940, State Lands Act 1945, Forest Act 1992, Land Sales Act 1974, Land Transfer Act 1971, iTaukei Land Trust Act 1940, Companies Act 2015, Consumer Credit Act 1999, Property Law Act 1971, Indemnity, Guarantee and Bailment Act 1881, Personal Property Securities Act 2017 or any other written law or any rule of the common law or equity or any instrument or other security, contract, agreement or undertaking.

(4) No further consent, permit, notice, certification, ratification, charges, registration fees of any kind, filing fees, lodgement fees, or fees of any kind whatsoever is required to be given in respect of any instrument sought to be registered for the purpose of evidencing, recording or effecting the matters referred to in this Act notwithstanding anything to the contrary in any written law or rule of the common law or equity or any instrument or other security, contract, agreement, undertaking or property.

(5) The exercise by BSP Fiji of any right, power, remedy or benefit under any instrument or other security, contract, agreement, undertaking or property vested in BSP Fiji by virtue of this Act, including, without limitation, any power of sale, re-entry, seizure or foreclosure, is valid and effective at law and in equity notwithstanding that the vesting of the right, power, remedy or benefit in BSP Fiji by operation of this Act might not have complied with any written law or rule of the common law or equity or with any instrument or other security, contract, agreement, undertaking or property.

(6) BSP and BSP Fiji is not liable to any customer for any common law, contractual, constitutional or statutory breach of privacy or confidentiality resulting from the operation of this Act.

(7) A director, secretary or auditor of BSP is not by reason of this section a director, secretary or auditor, as the case may be, of BSP Fiji.

Transfer of business

5. Without prejudice to the generality of the foregoing provisions of this Act, the following provisions have effect in relation to the BSP undertaking—

- (a) the relationship between BSP and a customer at any office or branch of BSP is, on and after the appointed time, to be between BSP Fiji and such customer and gives rise to the same rights and the same duties (including rights of set-off) as would have existed before that time as if such relationship had been between BSP Fiji and the customer, and so that any instruction, order, direction, mandate or authority given by such customer to BSP and subsisting at or given after the appointed time is, unless and until revoked or cancelled, deemed to have been given to BSP Fiji;
- (b) any security held by BSP as security for the payment of debts or liabilities (whether present or future, actual or contingent) of any person is transferred or deemed to be transferred to BSP Fiji at the appointed time and is held by and available to BSP Fiji as security for the payment of such debts and liabilities to BSP; and where the security extends to future advances or to future liabilities of such person, the security must as at and after that time be held by and be available to BSP Fiji as security for future advances to the said person by, and future liabilities of the said person to, BSP Fiji to the same extent to which future advances by, or liabilities to, BSP were secured by them at any time before that time;
- (c) BSP Fiji is, in relation to any security transferred or deemed to have been transferred to it in accordance with or by virtue of this Act and the moneys thereby secured, entitled to the same rights and priorities and subject to the same obligations and incidents as BSP would have been entitled and subject to if the same had continued to be held by BSP;
- (d) the custody of any document, goods or thing held by BSP as bailee for any other person at any office or branch of BSP is transferred or is deemed to be transferred to BSP Fiji at the appointed time and the rights and obligations of BSP under any contract of bailment relating to such document, goods or thing is transferred or is deemed to be transferred at that time to BSP Fiji;
- (e) any negotiable instrument or order for payment of money whether drawn, given, accepted or endorsed before, at, or after the appointed time, which is expressed to be drawn on, or given to, or accepted or endorsed by, BSP, or payable at any place of business of BSP has the same effect at and after the appointed time as if it had been drawn on, or given to, or accepted or endorsed by, or payable at the same place of business of BSP Fiji;
- (f) nothing in or about the operation of this Act disturbs the priority before the appointed time of any security or other right relative to those held by any third party other than BSP and BSP Fiji;

- (g) notwithstanding the operation of this Act, all advances and payments made by BSP Fiji to or for the benefit of former depositors or customers of BSP are deemed to be lawfully made and may be charged to the account of any such depositor or customer;
- (h) nothing in this Act in any way affects or alters the respective rights and obligations of any party other than in respect of the BSP business.

Assumption of responsibility for BSP employees

6.—(1) From the appointed time and notwithstanding any written law relating to employment, all BSP employees will cease to be employees of BSP, and BSP Fiji must assume responsibility as employer for each BSP employee.

(2) Without limiting subsection (1), BSP Fiji will regard the service of each BSP employee with BSP as being continuous with the employee's service with BSP Fiji for the purposes of any employee entitlement.

(3) From the appointed time, for all purposes, BSP Fiji and each BSP employee have the same rights, entitlements, responsibilities and liabilities in respect of each other as BSP and such BSP employee had to each other immediately before the appointed time under any collective agreement between BSP and a BSP employee's trade union or any written or other contract of employment.

(4) A BSP employee is not entitled under any contract of employment, collective agreement or written law to receive any payment (including any notice, severance or redundancy payment) or other benefit by reason only of ceasing, by operation of this Act, to be an employee of BSP.

Release and discharge of BSP

7.—(1) At the appointed time BSP is released and discharged from all further actual and contingent liabilities and obligations in respect of the BSP business to any person to whom under this Act, BSP Fiji is bound in law provided that this provision does not affect or otherwise modify the position *inter se*.

(2) Nothing in this Act affects or otherwise releases BSP from any obligation it has to the Reserve Bank of Fiji in respect of BSP Fiji's banking business.

Deemed consents etc for vesting

8.—(1) Any consent, approval, permit, certification or ratification required by or under any written law, rule of common law, equity or any instrument for the vesting of—

- (a) any BSP property to which BSP Fiji has become entitled by this Act;
- (b) any transfer made or security given to BSP to which BSP Fiji has become entitled by this Act;
- (c) any transfer made or security given to BSP to secure any loan or interest on any loan or any remedy for the enforcement of any loan to which BSP Fiji has become entitled by this Act; or

- (d) any other right or benefit of BSP to which BSP Fiji has become entitled by this Act,

is deemed to have been granted at the appointed time, so that the property the subject of the transfer or security (or any part of it) or other right or benefit can be vested in BSP Fiji by this Act.

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

Actions etc not to abate

9.—(1) Any action, arbitration or proceeding and any cause of action, arbitration or proceeding which at the appointed time is pending or existing by, against, or in favour of BSP in respect of the BSP business does not abate or be discontinued or be in any way prejudicially affected by reason of this Act, but the same may be prosecuted, continued and enforced by, against or in favour of BSP Fiji as and when it might have been prosecuted, continued and enforced by, against or in favour of BSP if this Act had not been made.

(2) At the appointed time, the rights and liabilities of BSP in respect of each action, arbitration, proceeding and cause of action referred to in subsection (1) vests in BSP Fiji and BSP Fiji is substituted for BSP as the party to each such action, arbitration, proceeding or cause of action.

(3) In this section, “proceeding” includes a dispute, employment dispute, trade dispute, grievance and employment grievance as defined in sections 4 and 185 of the Employment Relations Act 2007.

Use of information

10. Notwithstanding—

- (a) any right under any written law or common law or equity relating to privacy of information or customer confidentiality;
- (b) the provisions of any contract relating to privacy of information or customer confidentiality; or
- (c) any banking code of practice or standard of conduct to which BSP or BSP Fiji is party,

any information, of whatsoever nature, given or deemed to have been given by a customer, contracting party or any other person to BSP for use by BSP in the business, is deemed to be information properly given to BSP Fiji for the same purpose.

PART 3—CONSEQUENTIAL MATTERS

Evidence

11. Any book or other document which if this Act had not been made, would have been evidence in respect of any matter for or against BSP must, on and after the appointed time, be admitted in evidence in respect of the same matter for or against BSP Fiji.

Bankers' Books Evidence Act 1932

12.—(1) Notwithstanding the transfer of the BSP business to BSP Fiji under and in terms of this Act, the provisions of the Bankers' Books Evidence Act 1932 continues to apply with respect to the books of BSP which are transferred to BSP Fiji by virtue of this Act and to entries made in such books before the appointed time.

(2) In this section, “books” include ledgers, day books, cash books, account books, microfiche, computer disks, software programmes and such other electronic and magnetic records and retrieval systems compiled by BSP and all other books and records used in the BSP business.

Directions to Registrars to record entries and memorials

13.—(1) Upon application, lodgment and payment of the prescribed fee for registration by BSP Fiji in respect of any grant or certificate of title, security, lease or other instrument, the Registrar of Titles and Registrar of Deeds respectively must make—

- (a) all such entries upon the instruments 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 of property to BSP Fiji under this Act.

(2) The Registrar of the Personal Property Securities Act 2017 must not refuse to register any amendment filed by BSP Fiji, in relation to any notice registered with the Personal Property Securities Registry, necessary or expedient to record the transfer of a security to BSP Fiji under this Act.

(3) Upon application and the payment of the prescribed fee by BSP Fiji, 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 the Personal Property Securities Act 2017) is hereby authorised and directed to make all entries and records with respect to any transfer of property or security in any public record or register under the person's control that are necessary or expedient to record the transfer of property or security to BSP Fiji under this Act.

(4) Upon application and payment of the prescribed fee by BSP Fiji, 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 BSP Fiji under this Act.

(5) Nothing in this Act prejudices or adversely affects BSP Fiji or BSP Fiji's rights under any instrument or security transferred to it by operation of this Act in any manner whatsoever for failure to make an application to a Registrar or person maintaining a register in terms of subsection (4).

Holders of instruments to produce them for recording

14. Upon application by BSP Fiji to a Registrar or person maintaining a register in respect of any grant or certificate of title, mortgage, lease or other instrument for the purpose of the Registrar making the entries required by section 13, the holder of the relevant instrument must produce it to such Registrar or person maintaining a register.

Effect of entry into possession by BSP Fiji

15.—(1) The entry by BSP Fiji upon, or the use, enjoyment or occupation by BSP Fiji of any land which prior to the appointed time was used, enjoyed or occupied by BSP 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 does 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) Nothing effected or authorised by this Act—

- (a) gives rise to, or entitles any person to exercise a right to terminate or cancel any contract, security, instrument or arrangement or to accelerate the performance of any obligation;
- (b) places BSP or BSP Fiji or any other person in breach of any written law or rule of law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property, security or liabilities or the disclosure of any information; or
- (c) releases any debtor or surety wholly or in part from any obligation.

Operation of Act

16.—(1) This Act operates to the exclusion of any other written law relating to or affecting the transfer of property, land titles, securities, or 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 any person, including the State, and has effect notwithstanding anything in the instruments constituting BSP and BSP Fiji or in their respective articles of association or other rules.

Irregularities concerning transfer and vesting

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

Taxation consequences of transfer and vesting

18.—(1) No liability is created, or is deemed to be created under any tax law for BSP or BSP Fiji by—

- (a) the divesting by BSP of the BSP business and BSP property and the vesting of the BSP business and BSP property in BSP Fiji;
- (b) the vesting of BSP capital; and
- (c) the assumption by BSP Fiji of the BSP liabilities.

(2) For the purposes of a tax law, BSP Fiji is deemed, at and from the appointed time in respect of the assets, property and rights vested in, and liabilities assumed by, BSP Fiji under this Act—

- (a) to be in the same position as BSP was in immediately before the appointed time; and
- (b) without limiting paragraph (a), to become subject to all liabilities, and entitled to all benefits and advantages, to which BSP was subject, or entitled.

(3) To avoid doubt, the retained earnings and capital adequacy reserves of BSP prior to the appointed time is, to the extent that they were charged to income tax before the appointed time, deemed after the appointed time to be the retained earnings and capital adequacy reserves of BSP Fiji charged to the same amount of income tax.

Regulations

19. The Minister may make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE
(Section 2)

EXCLUDED INTERESTS

1. Shares held by BSP in:
 - (a) BSP Life (Fiji) Limited; and
 - (b) BSP Convertible Notes Limited.
2. All registered, pending and unregistered trademarks of BSP in Fiji including any associated registrations, applications, renewals and extensions of such trademarks.
3. Such other interests of BSP declared by the Minister by order published in the Gazette to be an excluded interest for the purposes of the Act.

Passed by the Parliament of the Republic of Fiji this 5th day of December 2024.