



**No. 15 of 2015**

**I assent,**

**(SIR COLVILLE N. YOUNG)**

*Governor-General*

17<sup>th</sup> September, 2015.

**AN ACT to provide for the vesting in Heritage Bank Ltd. of the business in Belize of FirstCaribbean International Bank (Barbados) Limited; and for matters connected therewith or incidental thereto.**

*(Gazetted 18<sup>th</sup> September, 2015.)*

***BE IT ENACTED, by and with the advice and consent of the House of Representatives and the Senate of Belize and by the authority of the same, as follows:***

1. This Act may be cited as the

Short title.

**BANK UNDERTAKING (FIRSTCARIBBEAN  
INTERNATIONAL BANK (BARBADOS) LIMITED  
BELIZE BRANCH) VESTING ACT, 2015.**

**Interpretation.**

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

“**Agreement**” means the Transfer Agreement dated the 3rd day of August, 2015 and made between FirstCaribbean International Bank (Barbados) Limited and Heritage Bank Ltd. setting out the terms for the transfer of the banking business of FirstCaribbean International Bank (Barbados) Limited in Belize;

“**Appointed Day**” means the day to be appointed by the Minister by Order published in the *Gazette*;

“**Belize Transferee**” means Heritage Bank Ltd.;

“**Belize Transferor**” means FirstCaribbean International Bank (Barbados) Limited;

“**customer**” includes any person having a banking account, loan, deposit, or other dealing, transaction or arrangement in Belize with FirstCaribbean International Bank (Barbados) Limited in the course of normal business;

“**existing**” means in existence or in force (as the case may require) immediately before the close of business on the Appointed Day;

“**Minister**” means the Minister for the time being responsible for banks and banking;

“**Offshore 1 Collateral**” means the portion of security which is specified in the Agreement as also being security for loans forming part of the Offshore 1 Loan Portfolio;

“**Offshore 1 Loan Portfolio**” means the portfolio of offshore corporate and commercial loan balances being sold and assigned to Heritage International Bank and Trust Limited by the Offshore 1 Transferors pursuant to the Offshore Loan Purchase Agreements;

**“Offshore 1 Transferee”** means Heritage International Bank and Trust Limited;

**“Offshore 1 Transferors”** means (i) FirstCaribbean International Bank (Cayman) Limited, (ii) FirstCaribbean International Bank (Bahamas) Limited, and (iii) FirstCaribbean International Wealth Management Bank (Barbados) Limited, each in respect of the respective security which is included in the Offshore 1 Collateral;

**“Offshore 2 Collateral”** means the portion of security which is specified in the Agreement as also being security for loans forming part of the Offshore 2 Loan Portfolio;

**“Offshore 2 Loan Portfolio”** means the portfolio of offshore corporate and commercial loan balances, which may from time to time, be sold and assigned to Heritage International Bank and Trust Limited by the Offshore 2 Transferor pursuant to the Syndication Agreements;

**“Offshore 2 Transferee”** means Heritage International Bank and Trust Limited, in its capacity as collateral agent;

**“Offshore 2 Transferor”** means FirstCaribbean International Bank (Bahamas) Limited;

**“Offshore Loan Purchase Agreements”** means, collectively, (i) the transfer agreement dated the Appointment Date and made between FirstCaribbean International Bank (Cayman) Limited and the Offshore 1 Transferee, (ii) the transfer agreement dated the Appointment Date and made between FirstCaribbean International Wealth Management Bank (Barbados) Limited and the Offshore 1 Transferee, and (iii) the transfer agreement dated the Appointment Date and made between FirstCaribbean International Bank (Bahamas) Limited and the Offshore 1 Transferee, each setting out the terms for the transfer of the portfolio of certain offshore corporate and commercial loan balances set forth thereunder;

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

“**Syndication Agreements**” means the agreements made among the Belize Transferor, FirstCaribbean International Bank (Bahamas) Limited and Heritage International Bank and Trust Limited, setting out the terms for the syndication of the offshore loan balances set forth thereunder;

“**Transferee**” means, as applicable, (i) the Belize Transferee, in respect of the Undertaking of the Belize Transferor; (ii) the Offshore 1 Transferee, in respect of the Undertaking of the Offshore 1 Transferors; and (iii) the Offshore 2 Transferee, in respect of the Undertaking of the Offshore 2 Transferor;

“**Transferor**” means, as applicable, (i) the Belize Transferor, in respect of the Undertaking of the Belize Transferor; (ii) the Offshore 1 Transferors, in respect of the Undertaking of the Offshore 1 Transferors; and (iii) the Offshore 2 Transferor, in respect of the Undertaking of the Offshore 2 Transferor;

“**Undertaking**” or “**Undertaking of the Transferor**” means, collectively, the Undertaking of the Belize Transferor, the Undertaking of the Offshore 1 Transferors and the Undertaking of the Offshore 2 Transferor, as applicable;

“**Undertaking of the Belize Transferor**” means the assets, liabilities, rights, obligations, property, files and documentation of the banking business of the Belize Transferor carried on in Belize and which has been agreed to be transferred to the Belize Transferee pursuant to the terms of the Agreement, including (but not limited to) the

property, rights, liabilities and obligations specified in the Schedule to this Act, but not including those assets and liabilities which are expressly excluded by the terms of the Agreement;

**“Undertaking of the Offshore 1 Transferors”** means the rights, obligations and interest of the Offshore 1 Transferors in respect of the Offshore 1 Collateral, which pursuant to the Agreement is to vest in the Offshore 1 Transferee;

**“Undertaking of the Offshore 2 Transferor”** means the rights, obligations and interest of the Offshore 2 Transferor in respect of the Offshore 2 Collateral, which pursuant to the Agreement is to vest in the Offshore 2 Transferee;

**“Will”** includes a codicil and any other testamentary writings.

3. (1) Subject to the Agreement and the Offshore Loan Purchase Agreements at the close of business on the Appointed Day, (i) the Undertaking of the Belize Transferor shall by virtue of this Act vest absolutely in the Belize Transferee without any further assurance; (ii) the Undertaking of the Offshore 1 Transferors shall by virtue of this Act vest absolutely in the Offshore 1 Transferee without any further assurance; and (iii) the Undertaking of the Offshore 2 Transferor shall by virtue of this Act vest absolutely in the Offshore 2 Transferee without any further assurance and upon such vesting all existing assets, liabilities, rights, obligations and other property which by the Agreement and the Offshore Loan Purchase Agreements have been agreed to be transferred shall vest in the Transferee and where any real property and any security has, by virtue of this Act, vested in the Transferee, the Registrar General, the Registrar of Lands and the Registrar of Companies and Corporate Affairs and any other relevant authority shall take due notice thereof and shall, on the issue of a certificate under the hand of the Financial Secretary,

Vesting in  
Transferee of  
Undertaking of  
the  
Transferor.

certifying that all taxes, stamp duties, registration fees and other duties and charges payable to the Government of Belize in respect of the transfer of the Undertaking, have been duly paid, make such annotations on the records as may be necessary and issue all such certificates or other documents as may be required to perfect the title of the Transferee to such real property or security.

(2) The transfer or vesting of any part of the Undertaking of the Transferor effected by this Act shall not —

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

Effect of the Act on the Undertaking.

4. (1) The effect of this Act as regards the Undertaking hereby transferred shall be that as and from the close of business on the Appointed Day —

- (a) every existing contract and security comprised in the Undertaking to which the Transferor is a party, whether in writing or not, shall be construed and have effect as if —
  - (i) the Transferee had been a party thereto instead of the Transferor;
  - (ii) for any reference (however worded and whether expressed or implied) to the Transferor there had been substituted, as respects anything falling to be done after the close of business on the Appointed Day, a reference to the Transferee;

- (iii) for any reference (however worded and whether expressed or implied) to the directors or to any director, officer, clerk or servant of the Transferor there had been substituted, in respect of anything falling to be done after the close of business on the Appointed Day, a reference (as the case may require) to the directors of the Transferee or to such director, officer, clerk or servant of the Transferee as the Transferee may appoint or, in default of appointment, to the director, officer, clerk or servant of the Transferee corresponding as nearly as may be to the above mentioned director, officer, clerk or servant; and
- (iv) for any reference (however worded and whether expressed or implied) to the Transferor there had been substituted, as respects any benefit or benefits to accrue after the close of business on the Appointed Day, a reference to the Transferee;
- (b) any account between the Transferor and a customer shall be construed as and deemed to be an account between the Transferee and that customer;
- (c) any instruction, direction, mandate, power of attorney, guarantee, pledge, assignment, debenture, mortgage, bill of sale, charge, chose in action, insurance policy, security or consent given to the Transferor shall have effect as if given to the Transferee without notification to the maker thereof;

- (d) any negotiable or non-negotiable instrument or order for payment of money which is expressed to be drawn on, given to, accepted or endorsed by the Transferor, or payable at any of its places of business shall have effect as if it had been drawn on, given to, accepted or endorsed by the Transferee or payable at the place of business of the Transferee;
- (e) any security transferred to the Transferee by virtue of this Act that immediately before the close of business on the Appointed Day was held by the Transferor as security for the payment or discharge of any debt, liability or obligation, whether present or future, actual or contingent, shall be held by and shall be available to, the Transferee as security for the payment or discharge of such debt, liability or obligation, and any such security which extends to future advances or liabilities shall, from the close of business on the Appointed Day, be held by and shall be available to, the Transferee as security for future advances by, and future liabilities to, the Transferee in the same manner and in all respects as future advances by, or liabilities to, the Transferor were secured thereby immediately before the close of business on the Appointed Day;
- (f) any judgment or award obtained by or against the Transferor and not fully satisfied before the close of business on the Appointed Day shall be enforceable by or against the Transferee;
- (g) subject to the Agreement, any past, current or pending contracts, orders, engagements, obligations, duties, rights or agreements by or with the Transferor shall be enforceable by or against the Transferee only;



**(h)** whenever, in the register of mortgages and charges required by section 95 of the Companies Act to be kept by the Registrar of Companies and Corporate Affairs or in the registers required to be kept by the Registrar General and the Registrar of Lands, the name of the Transferor appears such reference shall be deemed to be a reference to the Transferee.

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(2) Paragraph **(a)(ii)** and **(iii)** of subsection (1) apply to:

- (a)** any statutory provision;
- (b)** any provision of any contract or security to which the Transferor was not a party; and
- (c)** any provision of any other document (including 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 which immediately before the close of business on the Appointed Day were held by the Transferor, whether severally 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 close of business on the Appointed Day, be held by the Transferee, whether severally or jointly with any other person, in the same capacity upon the trusts, and with and subject to the powers, provisions, liabilities and obligations applicable thereto respectively.

Giving of  
notice,  
permission and  
consent.

5. Any notice which may be required under the Laws of Belize to be given by the Transferor or the Transferee to any third party or to be published, and any authorization, permission or consent required to be obtained for the perfecting of any transfer or assignment, the effective exercise of any right, the enjoyment of any benefit or the assumption of any liability or obligation by the Transferee by virtue of the vesting in the Transferee of the Undertaking, shall be deemed to have been duly given, published and obtained by the passing of this Act.

Commencement.

6. This Act shall come into force on the Appointed Day:

Provided that no such day shall be appointed until such time as all the taxes, stamp duties, registration fees, and other duties and charges payable to the Government of Belize in respect of the transfer of the Undertaking from the Transferor to the Transferee have been duly paid.

## SCHEDULE

### PART I — Property and Rights Transferred

All assets of the banking business carried on by the Belize Transferor in Belize which at the close of business on the Appointed Day are recorded on the books and files of the Belize Transferor in Belize or have been allocated to the said banking business (but not including those assets which are expressly excluded by the terms of the Agreement), which assets consist of all the estate, right, title and interest and responsibilities of the Belize Transferor in and to all property of the Belize Transferor recorded in such books or so allocated of every kind and description both real and personal, movable and immovable, corporeal and incorporeal, which assets include the properties set out hereunder as at the close of business on the Appointed Day.

#### **Freehold Properties**

Land and office premises at corner of Church and Albert Streets in Belize City designated

<u>Registration Section</u>	<u>Block</u>	<u>Parcel</u>
Albert/Mesopotamia	45	598

Portion of Lot #77 office premises therein at corner of Commerce Street and Court House Road in Dangriga

Land and office premises in Belmopan designated

<u>Registration Section</u>	<u>Block</u>	<u>Parcel</u>
Belmopan	20	1801

### PART II — Liabilities and Obligations Assumed

ALL debts, liabilities, contractual engagements and obligations whatsoever (actual, contingent or otherwise) of the Belize Transferor

in Belize as at the close of business on the Appointed Day, and comprising debts, contractual engagements, liabilities and obligations to customers and others incurred by the Belize Transferor in carrying on the Undertaking of the Belize Transferor by excluding those liabilities which are expressly excluded by the terms of the Agreement.