

NO. 11 OF 1978**BARCLAYS BANK OF KENYA LIMITED ACT**

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NO. 11 OF 1978

BARCLAYS BANK OF KENYA LIMITED ACT

*[Date of assent: 25th September, 1978.]**[Date of commencement: 29th September, 1978.]*

An Act of Parliament to make provision for the transfer of the assets and liabilities relating to the business of Barclays Bank International Limited carried on in Kenya to Barclays Bank of Kenya Limited, a corporation incorporated in Kenya, and for purposes connected therewith and incidental thereto

[Act No. 11 of 1978.]

WHEREAS—

1. Barclays Bank International Limited (hereinafter referred to as Barclays) is a company incorporated in England with Limited liability and carrying on banking, executorship and trust business in Kenya and elsewhere;
2. Barclays Bank of Kenya Limited (hereinafter referred to as the New Bank) is a company incorporated and licensed in Kenya for the purpose of carrying on banking, executorship and trust business;
3. The Government and Barclays have agreed that the undertaking and business in Kenya of Barclays should be transferred to and vested in the New Bank, as provided in this Act, and that the other provisions contained in this Act should take effect;
4. It is expedient that the said transfer should be effected economically and without interference with the conduct and continuity of the said banking business in Kenya of Barclays:

1. Short title

This Act may be cited as the Barclays Bank of Kenya Limited Act, 1978.

2. Interpretation

In this Act, unless the context otherwise requires—

“**customer**” means any person having an existing banking account or other dealing, transaction or arrangement with Barclays in the course of banking business conducted in Kenya by Barclays;

“**excluded employee**” means any person who, not being a citizen of Kenya, is, immediately before the vesting day, employed by Barclays and who has entered into a contract of service which requires him to serve that bank not only in Kenya but elsewhere if called upon so to do;

“**existing**” means existing or in force immediately before the vesting day;

“**liabilities**” means duties and obligations of every description;

“**property**” means property of every description falling to be included in the Kenya balance sheets of Barclays made up as at the close of business on the day preceding the vesting day in accordance with its normal practice and includes property held on trust or as bailee and securities, rights and powers of every description;

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

“**undertaking**”, in relation to Barclays, means its existing business and property in Kenya and all of the liabilities in Kenya to which it was subject in respect of its business in Kenya immediately before the vesting day, except liability for tax;

“**vesting day**” means the day appointed under section 3(1);

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

3. Transfer of undertaking of Barclays

(1) On such day as the Minister may, by notice in the *Gazette*, appoint (in this Act referred to as the vesting day) the undertaking of Barclays shall, subject to this section, be transferred to and vest in the New Bank by virtue of this Act and without further assurance.

(2) Any profits or losses of Barclays in respect of its undertaking up to the vesting day, calculated in accordance with its normal practice, and all liabilities for, or rights to reclaim, tax in respect of such profits or losses, shall accrue to or be borne by Barclays.

(3) If any portion of the undertaking of Barclays cannot be vested in the New Bank by virtue of this Act by reason of the fact that a transfer of that portion is governed otherwise than by the law of Kenya, then Barclays shall, as soon as is practicable after the vesting day, take all necessary steps to transfer such portion to the New Bank.

(4) A transfer or vesting effected by virtue of this Act—

- (a) shall not operate as a breach of any covenant or condition against alienation;
- (b) shall not give rise to any forfeiture;
- (c) shall not invalidate or discharge any contract or security;
- (d) shall operate notwithstanding any caveat, caution, inhibition or restriction made or entered under any written law relating to dealing with land.

4. Trust property

(1) Any property or right vested in the New Bank by virtue of this Act which, immediately before the vesting day, was held by Barclays, whether alone or jointly with any other person—

- (a) as trustee or custodian trustee under any trust deed, settlement or covenant of which the proper law is the law of Kenya;

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- (b) as executor or trustee of the will or administrator of the estate of a person who died domiciled in Kenya;
- (c) as attorney administrator of the estate of a person who died domiciled in Kenya or elsewhere leaving property in Kenya;
- (d) as judicial trustee appointed by order of any court;
- (e) as executor or trustee of the will of a person who died domiciled elsewhere than in Kenya where probate of the will has been granted or re-sealed in Kenya; or
- (f) in any other fiduciary capacity where the proper law is the law of Kenya,

shall, on and after the vesting day, be held by the New Bank, 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.

(2) Any existing instrument or order of any court under or by virtue of which any property or right became vested in Barclays in any such capacity as is mentioned in subsection (1), including, in the case of a will, any grant of probate thereof, and any provision therein or any existing contract or arrangement for the payment to, or retention by, Barclays of remuneration for its services in any such capacity shall, on and after the vesting day, be construed and have effect, so far as the context permits, as if for any reference therein to Barclays, there were substituted a reference to the New Bank.

5. Contracts, etc.

All existing contracts, agreements, conveyances, deeds, leases, licences, powers of attorney, undertakings, securities and other instruments, whether analogous to the foregoing or not, entered into by, made with or addressed to Barclays whether alone or with any other person, of which the proper law is the law of Kenya shall, as from the vesting day, be binding and of full force and effect against or in favour of the New Bank as if, instead of Barclays, the New Bank had been a party thereto, bound thereby or entitled to the benefit thereof and as if any reference, express or implied, to any director, officer or employee of Barclays were, as respects anything falling to be done on or after the vesting day, a reference to the director, officer or employee of the New Bank who most nearly corresponds thereto.

6. Existing Acts, etc.

Where any other written law or any existing document, other than a contract or will, of which the proper law is the law of Kenya, contains any reference, express or implied, to Barclays, such reference shall, on and after the vesting day and except where the context otherwise requires, be construed as a reference to the New Bank.

7. Banking business

Without prejudice to the provisions of any other section of this Act the following provisions shall have effect in relation to the banking business in Kenya of Barclays vested in the New Bank by virtue of this Act—

- (a) any account between Barclays and a customer shall, on and after the vesting day, become an account between the New Bank and the

Provided that—

- (i) nothing in this paragraph shall affect any right of the New Bank or of the customer to vary the conditions or incidents subject to which the account is kept; and
- (ii) deposits transferred from Barclays to the New Bank by operation of this Act shall, during a period of thirty days from the vesting day, be withdrawable on demand with interest accrued to the vesting day irrespective of the terms under which the deposit was made but without prejudice to any right of set-off or charge which the New Bank may have thereover;
- (b) any existing instruction, direction, mandate, power of attorney, authority or consent given to or by Barclays shall have effect, on and after the vesting day, as if given to or by the New Bank;
- (c) any security held by Barclays for the payment of debts or liabilities, whether present or future, actual or contingent, of any person, which is transferred to the New Bank by virtue of this Act shall, on and after the vesting day, be held by and be available to the New Bank as security for the payment of such debts and liabilities to the New Bank, and, where the moneys secured by such a security include future advances to or liabilities of such person, the security shall, as from that day, be held by and be available to the New Bank as security for future advances to that person by, and future liabilities of that person to, the New Bank to the same extent to which the same was held by or available to Barclays immediately before the vesting day as security for future advances or future liabilities;
- (d) the New Bank shall, in relation to any security transferred to it by virtue of this Act and to the moneys thereby secured, be entitled to the same rights and priorities, and be subject to the same obligations and incidents, as Barclays would have been entitled and subject to, if the same had continued to be held by Barclays;
- (e) any negotiable instrument or order for payment of money, whether drawn, given, accepted or endorsed before, on or after the vesting day, which is expressed to be drawn by or on, given by or to or accepted or endorsed by Barclays or payable at any place of business in Kenya of Barclays shall, on and after the vesting day, have the same effect as if it had been drawn by or on, given by or to or accepted or endorsed by the New Bank, or payable at the same place of business of the New Bank;
- (f) where, by the operation of any of the provisions of this Act, any right, liability or obligation becomes a right, liability or obligation of the New Bank, that bank and all other persons shall, on and after the vesting day, have the same rights, powers and remedies, and, in particular, the same rights and powers as to taking or resisting any legal proceedings or any application to any authority, for ascertaining, perfecting or enforcing that right, liability or obligation as if it had at all times been a right, liability or obligation of the New Bank;

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- (g) the custody of any document, goods or other property held by Barclays as bailee for any other person at any place of business in Kenya shall be transferred to the New Bank on the vesting day and the rights and obligations of Barclays under any contract of bailment relating to such documents, goods or other property shall be transferred to the New Bank on that day.

8. Wills

(1) Where, on or after the vesting day, any person dies domiciled in Kenya, leaving property in Kenya (with or without property elsewhere) and a will executed before the vesting day which appoints or purports to appoint Barclays whether alone or jointly with any other person to be executor or executor and trustee thereof, such will shall be construed and have effect as if for any reference therein to Barclays as such executor or executor and trustee, there were substituted a reference to the New Bank.

(2) Where on or after the vesting day any person dies domiciled outside Kenya leaving property in Kenya and a will executed before the vesting day relating exclusively to property in Kenya which appoints or purports to appoint Barclays whether alone or jointly with any other person to be executor or executor and trustee thereof, such will shall be construed and have effect as if, for any reference therein to Barclays as such executor or executor and trustee, there were substituted a reference to the New Bank.

9. Ademption

No testamentary gift shall be adeemed by reason only of the operation of this Act.

10. Legal proceedings, etc.

(1) No existing legal or arbitration proceedings or application to any authority by or against Barclays shall abate, be discontinued or be in any way prejudicially affected by reason only of any of the provisions of this Act, but the same may be prosecuted or continued by or against the New Bank and any judgement or award obtained by or against Barclays and not fully satisfied before the vesting day shall thereafter be enforceable by or against the New Bank.

(2) In any legal or arbitration proceedings concerning any right or liability transferred to or vested in the New Bank by this Act, a certificate under the hand of the manager of a branch of the New Bank that such right or liability has been so transferred to or vested in the New Bank shall be *prima facie* evidence of that transfer or vesting.

11. Employees and pension schemes

(1) Any person, other than an excluded employee, who is employed by Barclays in Kenya immediately before the vesting day shall on that day become an employee of the New Bank on the same terms and conditions of service as his existing terms and conditions and subject to any subsisting notice of termination, resignation or variation, and such employment with Barclays and the New Bank shall be deemed to be a single continuing employment.

(2) Any reference to Barclays in any trust deed or rules constituting or relating to any pension or widows' and orphans' scheme or provident or superannuation

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fund of which persons, other than excluded employees, employed by Barclays in Kenya are members shall, on and after the vesting day, be construed and have effect as if the same were a reference to the New Bank, but so that, for the purpose of ascertaining and calculating any right to benefits under such scheme or fund, service with Barclays to the vesting day shall be taken into account as if it were service with the New Bank.

(3) The operation of any of the provisions of this section shall not of itself give rise to a claim by any person to benefit under any scheme or fund such as is mentioned in subsection (2).

12. Evidence of books, documents, etc.

(1) On and after the vesting day—

- (a) all documents, records and admissions which would, before the vesting day, have been evidence in respect of any matter for or against Barclays shall be admissible in evidence for or against the New Bank;
- (b) Chapter VII of the Evidence Act (Cap. 80) shall apply to the books of Barclays transferred to the New Bank by virtue of this Act and to existing entries therein, as if such books were the books of the New Bank;
- (c) for the purposes of section 177 of the Evidence Act (Cap. 80), the books mentioned in paragraph (a) of this subsection shall be deemed to have been the ordinary books of the New Bank at the time of the making of an entry therein which purports to have been made before the vesting day, and any such entry shall be deemed to have been made in the usual and ordinary course of the banking business of the New Bank.

(2) In this section “**books**” means banker’s books as defined in section 3 of the Evidence Act (Cap. 80).

13. Exemption from tax, duties and fees on transfer

Notwithstanding the provisions of any other written law, no corporation or other tax, no stamp or other duty and no registration fee, filing fee or other fee of whatsoever nature, shall be charged or become payable solely on account of any transfer or vesting of any property effected by this Act or on account of anything done under section 14.

14. Duties of public officers

Every public officer having the power or duty to effect or amend any entry in any register relating to property or to issue or amend any certificate or other document effecting or evidencing title to property shall, upon request made by or on behalf of the New Bank or the owner of such property, do all such things as are by law necessary to complete the transfer of any property effected by this Act.
