

BARCLAYS BANK OF BOTSWANA LIMITED (VESTING) ACT, 1975

No. 4



of 1975

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An Act to effect the transfer and vesting of the assets and liabilities of Barclays Bank International Limited relating to its business in Botswana to Barclays Bank of Botswana Limited

Date of Assent: 12.3.1975.

Date of Commencement: 18.3.1975.

WHEREAS Barclays Bank International Limited, a company incorporated in England with limited liability, and carrying on the

business of banking in Botswana, has established a company in Botswana, namely Barclays Bank of Botswana Limited, to carry on that business;

AND WHEREAS Barclays Bank International Limited wish to transfer to and vest in Barclays Bank of Botswana Limited all its assets and liabilities relating to that business in Botswana;

AND WHEREAS it is expedient to effect such transfer and vesting by way of Act of Parliament;

NOW THEREFORE, be it

ENACTED by the Parliament of Botswana.

Short title
and com-
mencement

1. This Act may be cited as the Barclays Bank of Botswana Limited (Vesting) Act, 1975, and shall come into operation on the 1st April, 1975.

Inter-
pretation

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

“appointed day” means the 1st April, 1975;

“Barclays Bank International Limited” means Barclays Bank International Limited, a company incorporated in England with limited liability, carrying on the business of banking in Botswana;

“Barclays Bank of Botswana Limited” means Barclays Bank of Botswana Limited, the company of that name incorporated in Botswana for the purpose of carrying on the business of banking conducted in Botswana by the existing bank immediately before the appointed day;

“customer” means any person having a banking account or other dealing, transaction or arrangement with the existing bank in the course of the business of that bank immediately before the appointed day;

“excluded employee” means a person who, not being a citizen of Botswana, is, immediately before the appointed day, employed by the existing bank, and who has entered into a contract of service which requires him to serve the existing bank in Botswana or elsewhere if called upon so to do;

“existing” means existing and in force immediately before the appointed day;

“existing bank” means Barclays Bank International Limited;

“liability” means any enforceable legal debt or obligation, whether present or future, actual or contingent;

“new bank” means Barclays Bank of Botswana Limited;

“security” means a mortgage, or pledge, lien, or any other charge existing under the law of Botswana, and includes a debenture, guarantee, hypothecation, indemnity or undertaking or any

other means whereby the payment or discharge or any liability is secured;

“undertakings of the existing bank” means the business, and all property vested in or belonging to or held by the existing bank in Botswana immediately before the appointed day, and includes all such property, wherever situate then so vested in and belonging to and held by the existing bank in respect of or attributable to its Botswana banking operations and all liabilities to which it was subject in respect of its banking business in Botswana immediately before the appointed day, but does not include any property or liabilities which, by agreement between the Minister and the existing bank, shall be excluded from this Act;

“will” includes codicil or any other testamentary writing.

3. (1) Subject to subsection (2), on the appointed day all the undertakings of the existing bank shall be transferred to and vested in the new bank. Transfer of undertakings of existing bank

(2) If any part of the undertakings referred to in subsection (1) cannot be vested in the new bank by reason of the fact that the transfer of such part is governed otherwise than by the law of Botswana then the existing bank shall, as soon as practicable after the appointed day, take all the necessary steps to effect the transfer of such part to the new bank.

(3) Any transfer and vesting pursuant to this Act shall —

- (a) not be construed as a breach of any contract or condition against alienation, whether personal or otherwise, attaching to the title to any property so transferred or vested;
- (b) not give rise to any forfeiture;
- (c) not invalidate or discharge any contract or security;
- (d) operate notwithstanding any caveat, interdict, caution or warning made, entered or registered under any written law relating to dealings in land.

4. (1) Any property which, immediately before the appointed day, was held by the existing bank, whether solely or jointly with any other person, — Trust property

- (a) as trustee under any trust deed, settlement, contract, will, or order of any court, and whether originally so appointed or not;
- (b) as executor of the will of any person;
- (c) as administrator of the estate of any deceased person;
- (d) as guardian or curator of the estate of any infant or lunatic;
- (e) as receiver of any property whether appointed under a deed or debenture or by any court or otherwise;

(f) as trustee or liquidator of the estate of any insolvent person or company;

(h) in any other fiduciary capacity whatsoever,

shall, with effect from the appointed day, be held by the new bank, whether solely or jointly with any other person, in the same capacity upon the same trusts, and with and subject to the same powers, provisions and liabilities applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property became vested in the existing bank in any such capacity as is mentioned in subsection (1) and any provision therein or in any existing contract or arrangement for the payment to, or retention by, the existing bank of remuneration for its services in any such capacity, shall, with effect from the appointed day, be construed and have effect, so far as the context permits, as if any reference therein to the existing bank (other than a reference, however worded and whether express or implied, to terms and conditions or to a scale of fees of the existing bank), as a reference to the new bank.

Contracts,
etc.

5. Any contract, conveyance, deed, lease, licence, undertaking or any other instrument transferred or vested by this Act, entered into by or made with or addressed to the existing bank (whether solely or jointly with any other person) before, and in force on, the appointed day, shall, with effect from that day, be binding and of full force and effect in every respect against or in favour of the new bank as fully and effectively as if the new bank had been a party thereto or bound thereby, or entitled to the benefit thereof.

Banking
business

6. (1) An account which has been opened between the existing bank and a customer shall, with effect from the appointed day, become an account between the new bank and such customer, with the same rights and subject to the same liabilities and incidents (including rights of set-off) as would have been applicable thereto if such account between the existing bank and such customer had continued, and so that any existing instruction, order, direction, mandate or authority given by such customer in relation to that account shall continue to have full force and effect, and that account shall for all purposes be deemed to be a single continuing account:

Provided that nothing in this subsection shall affect the right of the new bank or of any customer of the new bank to vary the conditions and incidents subject to which any account is kept.

(2) Any security held by the existing bank for the due payment of any liability of any person which is transferred to the new bank pursuant to this Act shall, with effect from the appointed day, be held by and be available to the new bank for the payment of such liability to the new bank, and, if the money secured by that security includes any future advance to, or liability of, that person, that

security shall, as from that day, be held and be available to the new bank as security for such future advance to such person by, and any such future liability of such person to, the new bank to the same extent to which any future advance by, or liability to, the existing bank, were secured thereby immediately before the appointed day.

(3) No transfer effected by this Act of any such security as is mentioned in subsection (2) shall operate as a release thereof notwithstanding the provisions of any other written law.

(4) The new bank shall, in relation to any security transferred to it pursuant to this Act, and to the money thereby secured, be entitled to the same rights and preferences, and be subject to the same liabilities and incidents as those to which the existing bank would have been entitled or been subject if it had continued to be held by the existing bank.

(5) Any negotiable instrument or order for the payment of money, whether drawn, given, accepted or endorsed before, on or after the appointed day, which is expressed to be drawn on, given to, or accepted by or endorsed by the existing bank, or payable at its place or places of business, shall, with effect from the appointed day, have the same effect as if it had been drawn on, given to, accepted or endorsed by, the new bank, payable at the same place or places of business of the new bank.

(6) Where, pursuant to this Act, any right or liability has become a right or liability of the new bank, the new bank and all other persons shall, with effect from the appointed day, have the same rights, powers and remedies, including the same rights and powers to institute or defend any legal proceedings or any application to any lawful authority, for ascertaining, perfecting or enforcing such right or liability as if it had at all times been a right or liability of the new bank.

(7) The custody or control of any document, goods or other property held by the existing bank on behalf of any other person at any of its respective offices or branches in Botswana shall be transferred to the custody or control of the new bank on the appointed day, and the respective rights and liabilities of the existing bank under any contract of custody or control relating to such document, goods or property shall be transferred to the new bank on that day.

7. (1) If, on or after the appointed day, any person dies leaving property in Botswana and a will, whether executed before, on or after the appointed day, appointing the existing bank to be the executor or administrator thereof, such appointment shall be read and construed as the appointment of the new bank as executor or administrator, as the case may be, unless the will otherwise provides. ^{Wills}

(2) No testamentary disposition shall be invalidated by reason only of the operation of any of the provisions of this Act.

Legal proceedings, etc.

8. (1) No legal proceedings, arbitration proceedings or application to any lawful authority, pending immediately before the appointed day by or against the existing bank, shall be suspended, terminated or in any way affected by reason of any of the provisions of this Act, but they shall be prosecuted or continued by or against the new bank.

(2) Any judgment or award which has been obtained by or against the existing bank, and not fully satisfied before the appointed day, shall, with effect from that day, be enforceable only by or against the new bank.

(3) In any legal proceedings or arbitration concerning any right or liability transferred to and vested in the new bank pursuant to 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 and vested in the new bank shall be prima facie evidence of such transfer and vesting.

Employees and pension schemes

9. (1) Any person, other than an excluded employee, who is employed by the existing bank immediately before the appointed day, and who is not then under notice of dismissal or resignation, shall, on that day, become an employee of the new bank on the same terms and conditions of service, and such employment with the existing bank and the new bank shall be deemed for all purposes to be a single continuing employment.

(2) Any reference to Barclays Bank International Limited in any trust deed or rules constituting or relating to any pension scheme or provident or superannuation fund established in Botswana of which persons, other than excluded employees, employed by the existing bank are members shall, with effect from the appointed day, be construed and have effect as if it was a reference to the new bank of which such persons become employees under subsection (1), but so that, for the purpose of ascertaining and calculating any right to benefits under such scheme or fund, service with the existing bank prior to the appointed day shall be taken into account as if it were service with the new bank.

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

Evidence of books, documents, etc.

10. All documents, records and admissions which would, before the appointed day, have been evidence in respect of any matter for or against the existing bank shall, with effect from the appointed day, be admissible in evidence for or against the new bank.

Registration of transfers

11. In the case of property transferred to and vested in the new bank pursuant to this Act, in respect of the transfer of which any written law provides for registration, it shall be the duty of the

proper officer of the appropriate registration authority, upon written request made by or on behalf of the new bank, to make such entries in the appropriate register as are required by law to give effect to such transfer and, where appropriate, to issue to the new bank a certificate of title in respect of such property or to make the necessary amendments to the register, as the case may be, and to make any consequential endorsements on the deeds relating to the title, right or obligation concerned.

12. Notwithstanding the provisions of any other written law, no transfer, stamp or other duty, and no registration fee, filing fee or other fee of office, shall be charged or become payable solely on account of any transfer and vesting of any property pursuant to this Act on account of anything done under section 11.

Exemption from stamp duties, etc.

13. The Minister may enter into written agreement with the new bank whereby any property or liability of the existing bank shall be excluded from the provisions of this Act.

Minister empowered to enter into agreement with new bank
Licences 6 of 1966

14. Notwithstanding anything to the contrary in the Trading Act, 1966, the new bank shall be deemed to be duly licensed in terms of that Act to carry on business under the banker licences issued to all its branches and full-time agencies under all the existing licences issued up to and including the 31st December, 1975 :

Provided that the new bank shall produce to the national licensing authority all such licences for endorsement with the name of the new bank within 30 days after the appointed day, against payment of the fee prescribed.

15. The provisions of paragraph 1 (a) of Part II of the Fourth Schedule to the Companies Proclamation, 1959, shall not apply to the new Bank.

Exemption from certain provisions of Companies Proclamation, 1959

Passed by the National Assembly this 27th day of February, 1975.

I.P. GONTSE,
Clerk of the National Assembly.