

ACT NO. 4 OF 1995

**BARCLAYS BANK LESOTHO LIMITED
(VESTING) ACT, 1995**

An Act to effect the transfer and vesting of the assets and liabilities of the Barclays Bank PLC, relating to its business in Lesotho to Barclays Bank Lesotho Limited.

WHEREAS the Barclays Bank PLC, a Company incorporated in England with limited liability and carrying on banking business in the Kingdom of Lesotho as an externally registered company in terms of the Companies Act, 1967', has established a company in the Kingdom of Lesotho, namely Barclays Bank Lesotho Limited, to carry on that business;

AND WHEREAS Barclays Bank PLC wishes to transfer to, and vest in, Barclays Bank Lesotho Limited, all its assets and liabilities relating to that business in the Kingdom of Lesotho;

NOW THEREFORE this law is enacted to effect the transfer and vesting of the assets of Barclays Bank PLC relating to its business in the Kingdom of Lesotho to Barclays Bank Lesotho Limited.

Enacted by the Parliament of Lesotho.

Short title and commencement

1. This Act may be cited as the Barclays Bank Lesotho Limited (Vesting) Act, 1995 and shall be deemed to have come into operation on the 31st day of December 1994.

Interpretation

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

“Barclays Bank Lesotho Limited” means the company of that name incorporated in Lesotho for the purpose of carrying on the business of banking conducted in Lesotho by the existing bank immediately before the commencement date;

“Barclays Bank PLC” means Barclays Bank PLC, a company incorporated in England, with limited liability and carrying on the business of banking in Lesotho, as

an externally registered company;

“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 commencement date;

“existing bank” means the Barclays Bank PLC;

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

“new bank” means Barclays Bank Lesotho Limited;

“security” means a mortgage or pledge, lien, or any other charge existing under the law of Lesotho;

“undertaking of the existing bank” means the business, and all property vested in or belonging to or held by the existing bank in Lesotho, immediately before the commencement date;

“will” includes a codicil or any other testamentary disposition.

Transfer of undertakings of existing bank

3. (1) Subject to subsection (2), on the commencement date, all the undertakings of the existing bank shall be deemed to have been transferred to, and vested in, the new 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 Lesotho, the existing bank shall, as soon as practicable after the commencement date, take all the necessary steps to effect the transfer of that 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 any property so transferred or vested;
- (b) not give rise to any forfeiture;
- (c) not invalidate or discharge any contract or security; and
- (d) operate notwithstanding any caveat, interdict, caution or warning made, entered or registered under any law relating to dealings in land.

Trust property

4. (1) Any property which, immediately before the commencement date, was held by the existing bank, whether solely or jointly with any other person -

- (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 any person suffering from mental incapacity;
- (e) as receiver of any property, whether appointed under a deed or debenture or by any court or otherwise;
- (I) as trustee or liquidator of the estate of any insolvent person or company; or
- (g) in any other fiduciary capacity whatsoever,

shall, with effect from the commencement date, 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.

(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 capacity mentioned in subsection (1), or 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 commencement date, be construed and have effect, so far as the context permits, as if any reference 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, license, undertaking or any instrument transferred or vested by this Act, that was entered into by, or made with, or addressed to the existing bank (whether solely or jointly with any other person), and was in force on the commencement date, shall, with effect from that day, be binding and of full force and effect, against or in favour of the new bank as fully and efficiently 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 that has been opened between the existing bank and a customer shall, with effect from the commencement date, become an account between the new bank and that customer, with the same rights and subject to the same liabilities and incidents (including the rights of set-off) as would have been applicable if the account between the existing bank and that customer had continued, and any existing instruction,

order, direction, mandate or authority given by that 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 commencement date, be held by and be available to the new bank for the payment of that liability to the new bank and, if the money or obligation 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 that future advance or liability, to the same extent to which any future advance by, or liability to, the existing bank was secured before the commencement date.

(3) No transfer effected by this Act of any security mentioned in subsection (2), shall operate as a release.

(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 obligations 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 commencement date, 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 commencement date, have the same effect as if it had been drawn on, given to, accepted or endorsed by, the new bank or 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 commencement date, 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 and for ascertaining, perfecting or enforcing such rights 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 offices or branches in Lesotho, shall be transferred to the custody or control of the new bank on the commencement date, 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.

Wills

7. (1) If, on or after the commencement date, any person dies leaving property in Lesotho and a will, whether executed before, on or after the commencement date, appoints the existing bank to be the executor or administrator of that property, 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.

(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 commencement date 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 judgement or award that has been obtained by or against the existing bank and not fully satisfied before the commencement date, shall, with effect from that day, be enforceable only by or against the new bank.

Employees and pension schemes

9. (1) Any person other than a probationer, temporary employee, contract employee, consultant or seconded person, who is employed by the existing bank immediately before the commencement date, 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 the employment shall be deemed for all purposes, to be a single continuing employment.

(2) The new bank shall take over the rights and obligations of the existing pension fund in place. Such pension fund shall continue in respect of its obligations, rights, duties and the like, in favour of the new bank and the pension fund beneficiaries as set out in the existing pension fund prior to the commencement date, without variation or amendment. As from the commencement date, the new pension fund will be known as the Barclays Bank Lesotho Limited Pension Fund.

Evidence of books, documents, etc.

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

Registration of transfers

11. (1) All property which is transferred to and vested in the new bank pursuant to this Act on the commencement date and which was registered in the name of the existing bank, shall, on the commencement date, be deemed to be registered in the name of the new bank, pursuant to the Deeds Registry Act, 1967².

(3) The Registrar of Deeds shall endorse any lease in terms of the Land Act 1979³, or deed of transfer, or any

other deed evidencing the rights of the existing bank to immovable property in Lesotho, to the effect that such properties are registered in the name of the new bank from the commencement date.

Exemption from stamp duties, etc.

12. No transfer, stamp or other duty, no sales tax, penalty, impost of any nature and no registration fee, filing fee or other fee or tax of any nature shall be charged or become payable, solely on account of any transfer and vesting of any property under this Act, or on account of anything done under section 11.

Licenses

13. Notwithstanding any law in respect of the licensing of banking business in Lesotho, the new bank shall be deemed to be duly licensed in terms of the Financial Institutions Act 1973⁴ and the banking license and other authorities emanating from the existing bank's status, shall be deemed to be transferred to the new bank on the commencement date and the new bank will be deemed to be licensed to the same extent previously enjoyed by the existing bank and with the same rights and obligations.

NOTE

1. Companies Act No. 25 of 1967
2. Deeds Registry Act No. 12 of 1967
3. Land Act No. 17 of 1979
4. Financial Institutions Act No. 23 of 1973

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