CHAPTER 257

BARCLAYS BANK (TRANSFER OF BUSINESS) ACT

To provide for matters relating, consequential or incidental to the transfer by public deed of the business in Malta of Barclays Bank International Limited, including all assets and liabilities pertaining thereto, and to provide for other matters connected with or incidental to, any of the matters aforesaid.

(12th August, 1975)*

Enacted by ACT XXXIX of 1975.

Short title.

1. This Act may be cited as the Barclays Bank (Transfer of Business) Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires -

"Barclays Bank" means the company known as Barclays Bank International Limited and operating in Malta under a licence issued under the Banking Act†, on the 15th day of February, 1971;

Cap. 215.

"Minister" means the Minister responsible for finance;

"operative date" means the date on which the transfer of the relevant business is to take effect;

"relevant business" means the business of Barclays Bank in Malta as on the operative date;

"security" includes any privilege, hypothec, mortgage, pledge, debenture, guarantee, indemnity, undertaking and any other means of securing payment or the discharge of a debt, liability or obligation;

"transferee company" means the company designated by the Minister as the transferee company for the purposes of this Act.

(2) Notwithstanding anything contained in any other law, or in any deed, contract, instrument or other document whatsoever, the provisions of this Act shall have effect, and in the event of any conflict between a provision of this Act and the provision of any other law or anything contained in any deed, contract, instrument or document whatsoever, the provisions of this Act shall prevail.

Effect of deed transferring the relevant business.

3. (1) Where a public deed entered into between Barclays Bank and the transferee company and having annexed thereto the designation by the Minister of that company as the transferee company transfers or purports to transfer the relevant business, such deed shall with effect from the operative date, effect the transfer of the whole of that business and -

(*a*) the inclusion in such transfer of the assets and

See Government Notice No. 521 of 12th August 1975.

†Repealed by article 37 of Act XV of 1994. *See* the Banking Act (Cap. 371).

liabilities pertaining to the business of Barclays Bank in Malta shall comprise in such transfer all property of any description, movable and immovable belonging to the said bank and existing in Malta or relating to its business in Malta on the operative date, and all rights, real and personal, and all liabilities and obligations of that bank relating to its business in Malta as on the operative date, as well as any accessory or ancillary right, including hypothecs, privileges, pledges, suretyship and other rights securing any other right or obligation;

(*b*) in respect of any immovable property or other immovable thing and of any rights in or over such property, including any privilege or hypothec, comprised in any such transfer as aforesaid, such transfer shall have effect in regard to third parties upon the registration in the Public Registry of the public deed effecting such transfer by means of a note containing the designation of the parties to the deed and the date and nature of such deed, without any further compliance with any requirement of the law as to the particulars and other indication of the thing, property or right comprised in such transfer or with any other requirement or formality; and

(*c*) the transfer of any right, liability or other obligation or of any property or other thing, as aforesaid -

(i) shall not operate as a novation in any such right, liability or obligation, and any such right, liability or obligation shall continue to have effect as if there were no change in the holder, creditor or debtor thereof and as if they had always been rights, liabilities or obligations of the transferee company;

(ii) shall not operate as a breach of covenant or condition, whether statutory or contractual or give rise to any forfeiture;

(iii) shall not invalidate, release from or discharge any contract or security;

(iv) shall not give rise to the payment of any laudemium, premium, penalty or other payment whatsoever.

(2) Nothing in subarticle (1) shall preclude the notary receiving the deed whereby the transfer of the relevant business is effected from entering in any appropriate register at the Public Registry or in any note registered or enrolled in that registry such reference or other annotation as may be appropriate in the circumstances.

Additional effects of transfer of relevant business.

4. (1) Without prejudice to the generality of the provisions of article 3 of this Act, where the relevant business is transferred as provided in that article -

(*a*) every contract relating to the relevant business in force

on the operative date and to which Barclays Bank is a party shall, on and after that date, continue to have effect and be construed as if -

(i) the transferee company had been a party thereto instead of Barclays Bank;

(ii) for any reference (however worded and whether express or implied) to Barclays Bank there were substituted, as respects anything falling to be done on or after the operative date, a reference to the transferee company; and

(iii) for any reference (however worded and whether express or implied) to the directors or to a director, officer or servant of Barclays Bank there were substituted, as respects anything to be done on or after the operative date, a reference to the directors or to a director, officer or servant (as the case may require) of the transferee company;

and the provisions of sub-paragraphs (ii) and (iii) of this paragraph shall apply to any other contract or document relating to the relevant business and in force on the operative date as they apply in relation to a contract to which Barclays Bank is a party;

(*b*) every account relating to the relevant business between Barclays Bank and any other person shall on and after the operative date become an account between the transferee company and that other person subject to the same terms, conditions and incidental matters as applied before that date, and any such account shall be deemed for all purposes to be a single continuing account;

(*c*) any instruction, direction, mandate, power of attorney, authority or consent given to Barclays Bank in relation to the relevant business and in force on the operative date shall continue to have effect, on and after that date, as if given to the transferee company;

(*d*) any negotiable instrument or order for payment of money, whether drawn, given, accepted or endorsed before, on or after the operative date, which relates to the relevant business and is expressed to be drawn on, or given to, or accepted or endorsed by, Barclays Bank, or payable at any place of business of Barclays Bank, shall have effect, on and after the operative date, as if it had been drawn on, or given to, or accepted or endorsed by, the transferee company, or payable at the same place of business of the transferee company, as the case may require;

(*e*) any security transferred to the transferee company which immediately before the operative date was held by Barclays Bank as security for the payment or discharge of any debt, liability or obligation shall, on

and after the operative date, be held by and be available to the transferee company 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, on and after the operative date, be held by and be available to the transferee company as security for future advances by and future liabilities to the transferee company in the same manner in all respects as future advances by or liabilities to Barclays Bank were secured thereby before that date;

(*f*) any judgment or award obtained by or against Barclays Bank in relation to the relevant business before the operative date and not fully satisfied on that date shall, on and after that date, be enforceable by or against the transferee company.

(2) 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 transferee company, that company and any other person shall, on and after the operative date, have the same rights, powers and remedies for ascertaining or enforcing that right, liability or obligation as if it had at all times been a right, liability or obligation of the transferee company, and any legal proceedings, or any arbitration proceedings, or applications to any authority, pending immediately before the operative date by or against Barclays Bank, shall, on and after that date, be continued by or against the transferee company.

(3) Where on or after the operative date any person dies leaving property in Malta and by a will executed before that date appoints or purports to appoint Barclays Bank to be executor thereof, such will shall be construed to have effect as if for any reference therein to Barclays Bank there were substituted a reference to the transferee company.

Powers of the Minister and exemption from duty on documents.

5. (1) Where the relevant business is transferred as provided in article 3 the Minister may, by order in the Gazette, extend to the transferee company any provision of law which prior to such transfer applied to Barclays Bank subject to such conditions and with such modifications and reservations and in such manner and for such time as he may deem appropriate; and the Minister may also by a subsequent order in the Gazette add to, alter, vary or revoke any previous order, without prejudice to the making of a new order under this subarticle.

(2) The transfer of the relevant business to the transferee company shall be exempt from the payment of duty on documents.