

National Westminster Bank Plc Act 1998

Principal Act

Act. No. 1998-14

Commencement (LN.1998/014)
Assent

2.2.1998
29.1.1998

ARRANGEMENT OF SECTIONS

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AN ACT TO TRANSFER THE GIBRALTAR UNDERTAKING OF NATIONAL WESTMINSTER BANK PLC TO NATWEST OFFSHORE LIMITED AND FOR CONNECTED PURPOSES.

Title.

1. This Act may be cited as the National Westminster Bank Plc Act 1998.

Interpretation.

2.(1) In this Act –

“appointed day” means such day, as may, under section 3 of this Act, be appointed for the purposes of this Act;

“Bank” means NatWest Offshore Limited (formerly called Isle of Man Bank Limited), a company incorporated in the Isle of Man under the Companies Act 1865 of the Isle of Man as a company limited by shares;

“customer” means any person having a bank account or other dealing, transaction agreement, or arrangement with Plc in Gibraltar;

“existing” means existing, outstanding or in force on the appointed day;

“liabilities” includes debts, duties and obligations of every description (whether present or future, actual, or contingent);

“Plc” means National Westminster Bank plc, a public company incorporated in England under the Companies Act 1985 as a company limited by shares;

“property” means any property or assets in Gibraltar (whether present or future actual or contingent), including property held on trust and securities, rights, benefits and powers of every description;

“rights” means rights to which Plc is entitled under the laws of Gibraltar;

“security” includes a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment, indemnity, right of set off, undertaking or other means of securing payment or discharge of a debt or liability (whether present or future, actual or contingent);

“undertaking” means the business and all existing rights, property and liabilities of Plc in Gibraltar and whether or not Plc holds or is subject to the same beneficially or in any fiduciary capacity and

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

(2) References in this Act to rights, property and liabilities of Plc are references to all such rights, property and liabilities, whether or not capable of being transferred or assigned by Plc.

Appointed Day.

3. The provisions of this Act shall come into force on such day as the Minister for Trade and Industry may by notice in the Gazette appoint.

Transfer of Undertaking.

4.(1) On the appointed day the undertaking shall be transferred to, and vest in, the Bank so that the Bank shall succeed to the undertaking as if in all respects the Bank were the same person in law as Plc in respect of the undertaking.

(2) Where the transfer or vesting of any property or liability forming part of the undertaking is governed by the law of any country or territory outside Gibraltar, Plc shall, if the Bank so requires, take all necessary steps for securing that the transfer and vesting of the property or liability to and in the Bank is fully effective under the law of that country or territory.

(3) No transfer or vesting of an interest in land in Gibraltar effected by subsection (1) shall—

- (a) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of that interest for the purposes of any provision in any instrument concerning that interest;
- (b) operate as a breach of covenant or condition against alienation;
- (c) give rise to any forfeiture;
- (d) invalidate or discharge any contract or security; or
- (e) give rise to any entitlement under Section 69 of the Landlord and Tenant Act.

Supplementary provisions as to transfer.

5.(1) Without prejudice to the generality of sections 1 to 4 (but subject to any provisions of this Act to the contrary effect), the following provisions shall have effect in relation to the undertaking or any part thereof.

(2) Every existing contract subject to Gibraltar law to which Plc was a party (whether in writing or not), shall from the appointed day be construed and have effect as if –

- (a) the Bank had been party thereto instead of Plc;
- (b) for any reference (however worded and whether expressed or implied), to Plc there were substituted, as respects anything falling to be done on or after the appointed day, a reference to the Bank; and
- (c) any reference (however worded and whether express or implied), to the directors, officers, representatives or employees or to any director, officer, representative or employee of Plc were, as respects anything falling to be done on or after the appointed day, a reference to the directors, officers, representatives or employees of the Bank, as the case may require, or to such director, officer, representative or employee of the Bank as the Bank may appoint for that purpose or, in default of appointment, to the director, officer, representative or employee of the Bank who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee.

(3) Subsections (2)(b) and (c) shall apply to any statutory provision, to any provision of any existing contract to which Plc was not a party and to any provision of any other existing document (not being a contract or a will), as it applies in relation to a contract to which subsection (2) applies.

(4) Any account between Plc in Gibraltar and a customer shall on and from the appointed day become an account between the Bank and the customer subject to the same conditions and incidents as theretofore; and such account shall be deemed for all purposes to be a single continuing account.

Provided that nothing herein shall affect any right of the Bank or of the customer to vary the conditions or incidents subject to which any account is kept.

(5) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to Plc in Gibraltar (whether in writing or not and whether or not in relation to an account), shall have effect, on and from the appointed day, as if given to the Bank.

(6) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by Plc or payable at any place of business of Plc whether so drawn, given, accepted or endorsed before, on or after the appointed day, shall have the same effect as if it had been drawn on, or given to, or accepted or endorsed by, the Bank, or were payable at the same place of business of the Bank.

(7) The custody of any document or record, goods or other things held by Plc in Gibraltar as bailee at the branch or office of Plc within Gibraltar shall pass to the Bank on the appointed

day, and the rights and obligations of Plc under any contract of bailment relating to any such document or record, goods or thing shall be transferred on that day to the Bank.

(8)

- (a) Any security held immediately before the appointed day by the Gibraltar Branch of Plc or by a nominee or agent of or a trustee for the Gibraltar Branch of Plc as security for the payment or discharge of any liability (whether present or future, actual or contingent), shall be held by the Bank or, as the case may require, by that nominee or agent of or trustee for, the Bank and, to the extent of that debt or liability, be available to the Bank as security for the payment or discharge of such liability;
- (b) In relation to any security transferred to, and vested in, the Bank by or under this Act and any liabilities thereby secured, the Bank shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which Plc would have been entitled or subject if it had continued to hold the security;
- (c) Any security referred to in the foregoing provisions of this section which extends to future advances or liabilities shall, on and from the appointed day, be available to the Bank (whether for its own benefit or, as the case may be, for the benefit of any other person), as security for the payment or discharge of future advances and future liabilities to the same extent and in the same manner in all respects as future advances or liabilities were secured thereby immediately before that day.

(9) In relation to any security transferred to the Bank by or under this Act and any monies thereby secured, the Bank shall be entitled to the rights and priorities and be subject to the obligations and incidents to which Plc would have been entitled and subject if it had continued to hold the security.

(10) Any security referred to in the foregoing provisions of this section, which extends to future advances or liabilities, shall be held by, and be available to, the Bank as security for the payment or discharge of future advances by, or future liabilities to, the Bank to the same extent and in the same manner in all respects as future advances by, or future liabilities to, Plc were secured thereby immediately before the appointed day.

(11) Where by operation of any of the provisions of this Act any right, liability or obligation becomes a right, liability or obligation of the Bank, the Bank and all other persons shall, on and from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications 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 Bank; and any legal proceedings or applications to any authority pending immediately before the appointed day by or against Plc may be continued by or against the Bank.

(12) Any judgment or award obtained by or against Plc and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against Plc, be enforceable by or against the Bank.

Contract of Employment.

6. Section 5(2) (Supplementary provisions as to transfer), of this Act applies to a contract for the employment of any person by Plc; and employment with Plc and the Bank under any such contract shall be deemed for all purposes to be a single continuing employment.

Pensions.

7.(1) Any pension scheme of Plc shall, in relation to its Gibraltar Branch on and from the appointed day, become a pension scheme of the Bank and the trust deeds, rules and other documents and instruments constituting or relating to the same shall have effect accordingly.

(2) No officer or other employee of Plc who, by virtue of this Act becomes an officer or employee of the Bank shall be entitled as of right to participate in any existing pension fund established by the Bank.

Provisions as to trust property transferred and vested and provisions as to wills.

8.(1) Any property transferred to, and vested in, the Bank by virtue of this Act which immediately before the appointed day was held by Plc, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will (whether originally so appointed or not, and whether appointed under hand or seal, or by order of any court), or as executor of the will, or administrator of the estate of a deceased person, or as judicial trustee appointed by order of any court, or in any other fiduciary capacity, shall, on and from the appointed day, be held by the Bank alone or, as the case may be, jointly with such other person in the same capacity upon the trusts, and with and subject to the 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 or may become vested in Plc in any capacity, and any provision therein, or any existing contract or arrangement for the payment to, or retention by, Plc of remuneration for its services in any capacity, shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to Plc other than a reference (however worded and whether express or implied), to terms and conditions of, or to a scale of fees of, Plc, there were substituted a reference to the Bank.

(3) Any will made before the appointed day which has not been proved in Gibraltar before the appointed day, and any will made on or after the appointed day, being wills which appoint the Gibraltar branch of Plc to be an executor, trustee or recipient of any property as trustee, shall be construed and have effect as if for any reference therein to Plc as such executor, trustee or recipient or otherwise in connection with such appointment, not being a reference (however

worded and whether express or implied), to terms and conditions of, or to a scale of fees of, Plc, there were substituted a reference to the Bank.

(4) No testamentary gift shall be deemed by reason only of the operation of any of the provisions of this Act.

Admissibility of evidence.

9. All books, other documents and computerised records which would before the appointed day have been evidence in respect of any matter for or against Plc shall be admissible in evidence in respect of the same matter for or against the Bank.

Application of Bankers' Books Evidence Act 1879.

10.(1) On and from the appointed day the Bankers' Books Evidence Act 1879 shall apply to the books of Plc transferred to the Bank by this Act and to entries made therein before the appointed day, as if such books were the books of the Bank.

(2) For the purposes of section 4 of the said Act of 1879, books so transferred to and vested in the Bank shall be deemed to have been the ordinary books of the Bank in the custody or control of the Bank at the time of the making of any entry therein which purports to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

(3) In this section the expression "books" includes ledgers, day books, cash books, account books and other records used in the ordinary business of Plc whether those records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electric data retrieval mechanism.

Evidence of transfer.

11. A copy of this Act purporting to be printed by the Government printer shall, for all purposes, be prima facie evidence of the transfer of the property, rights, liabilities and obligations of Plc to the Bank and of the vesting thereof in the Bank in accordance with the provisions of this Act.

Saving for enactments regulating banking etc business.

12. Nothing in the foregoing provisions of this Act shall exempt Plc or the Bank or any other subsidiary of Plc (within the meaning of section 119 of the Companies Act), from any statutory provision regulating the carrying on of the business of any of them.

Costs of the Act.

13. The costs, charges and expenses, preliminary to, and of and incidental to, the preparing for, obtaining and passing of this Act, or otherwise in relation thereto, shall be paid by the Bank.