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Vesting of Certain Banking Businesses Order, 1974

Kings Order in Council 8 of 1974

Legislation as at 1 December 1998

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Vesting of Certain Banking Businesses Order, 1974

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Vesting of Certain Banking Businesses Order, 1974

Kings Order in Council 8 of 1974

Assented to on 22 March 1974

Commenced on 1 April 1974

[This is the version of this document at 1 December 1998.]

A King's Order-in-Council to give effect to the intention of Barclays Bank International Limited and the Standard Bank Limited to transfer the assets and liabilities of the said banks relating to their respective businesses in Swaziland to locally incorporated companies.

1. Short title

This King's Order-in-Council may be cited as the Vesting of Certain Banking Businesses Order, 1974.

2. Interpretation

In this Order, unless the context otherwise requires—

“**appointed day**” means the 1st April, 1974;

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

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

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

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

“**existing bank**” means either Barclays Bank International Limited or The Standard Bank Limited;

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

“**Minister**” means the Minister for Finance and Economic Planning;

“**new banks**” means Barclays Bank of Swaziland Limited and Standard Bank Swaziland Limited, companies to be incorporated in Swaziland for the purpose of carrying on the respective businesses hitherto conducted by the existing banks;

“**property**” means immovable and movable property of every description and includes any such property held in trust;

“**security**” means a mortgage, or pledge, lien, or any other charge existing under the common or statute law of Swaziland, and includes a debenture, guarantee, lien, pledge, hypothecation, indemnity or undertaking or any other means whereby the payment or discharge of any liability is secured;

“**The Standard Bank Limited**” means The Standard Bank Limited, a company incorporated in England with limited liability, carrying on the business of banking in Swaziland;

“**the undertakings of the existing banks**” means the business of and all of the property vested in or belonging to or held by them in Swaziland immediately before the appointed day, and includes all such property, wherever situate, then so vested in and belonging to and held by the bank concerned in respect

of or attributable to its Swaziland banking operations and all of the liabilities to which it was subject in respect of its banking business in Swaziland immediately before the appointed day, but does not include any property or liabilities which by agreement between the Minister and either existing bank, and the concurrence of the other existing bank, shall be excluded from this Order;

“will” includes codicil or any other testamentary writing.

3. Transfer of the undertakings of the existing banks

- (1) On the appointed day the respective undertakings of both existing banks shall be deemed to have been transferred to, and, notwithstanding any other law, by operation of this Order forthwith to vest in, each of the new banks concerned.
- (2) If any portion of the undertakings referred to in subsection (1) cannot be vested in the new banks by reason of the fact that the transfer of such portion is governed otherwise than by the law of Swaziland then the existing bank concerned shall as soon as practicable after the appointed day take all the necessary steps to effect the transfer of such portion to the new bank concerned.
- (3) Any transfer or vesting pursuant to this Order 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, caution or warning made, entered or registered under any written law relating to dealings with land.

4. Trust property

- (1) Any property transferred to or vested in the new banks pursuant to this Order which, immediately before the appointed day, was held by an existing bank, whether solely or jointly with any other person—
 - (a) as trustee under any trust deed, settlement, contract, will, or order of a court of competent jurisdiction, and whether originally so appointed or not;
 - (b) as executor of the will of any person;
 - (c) as administrator of the estate of a 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 of competent jurisdiction or otherwise;
 - (f) as trustee or liquidator of the estate of any insolvent person or company;
 - (g) in any other fiduciary capacity whatsoever;shall on and after the appointed day be held by the new bank concerned, whether solely or 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 of competent jurisdiction under or by virtue of which any property became vested in an existing bank in any such capacity as is mentioned in subsection (1) and any provision therein or any existing contract or arrangement for the payment to, or retention by, an existing bank or remuneration for its services in any such capacity, shall on or after the appointed day be construed and have effect so far as the context permits, as if any reference therein to an existing bank (other than a reference, however worded and whether express

or implied, to terms and conditions or to a scale of fees of an existing bank), is a reference to the new bank concerned.

5. Contracts, etc.

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

6. Banking business

- (1) An account which has been opened between an existing bank and a customer shall on and after the appointed day be deemed to have become an account between either of the new banks concerned 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 such existing bank and its customer had continued, and so that any existing instruction, order, direction, mandate or authority given by the customer in relation to the account shall continue to have full force and effect, and such account shall for all purposes be deemed to be a single continuing account:

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

- (2) Any security held by an existing bank for the due payment of any liability of any person which is transferred to either of the new banks pursuant to this Order shall on and after the appointed day be held by and be available to the new bank concerned for the payment of such liability to such new bank, and, if the money secured by such security includes any future advance to, or liability of, such person, the security shall, as from such day, be held and be available to the new bank concerned as security for such future advance to such person by, and any such future liability of such person to, such new bank to the same extent to which any future advance by, or liability to, such existing bank, were secured hereby immediately before the appointed day.
- (3) No transfer effected by this Order of any such security as is mentioned in subsection (2) shall operate as a release thereof notwithstanding any other law, statutory or otherwise.
- (4) The new banks shall, in relation to any security transferred to them pursuant to this Order, and to the money thereby secured, be entitled to the same rights and preferences, and be subject to the same liabilities and incidents to which an existing bank would have been entitled or been subject if they had continued to be held by the bank concerned.
- (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, or given to, or accepted or endorsed by an existing bank, or payable at its place of business, shall on and after the appointed day have the same effect as if it had been drawn on, or given to, or accepted or endorsed by, the new bank concerned, payable at the same place of business of such new bank.
- (6) If, pursuant to this Order, any right or liability has become a right or liability of either new bank, such bank and all other persons shall on and after 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 concerned.
- (7) The custody or control of any document, goods or other property held by an existing bank on behalf of any other person at any of its respective offices or branches in Swaziland shall be deemed to have been transferred to the custody or control of the new bank concerned on the appointed day, and the respective rights and liabilities of such existing bank under any contract of custody or control relating to such document, goods or property shall be deemed to have been transferred to the new bank concerned on such day.

7. Wills

- (1) If on or after the appointed day any person dies leaving property in Swaziland and a will, whether executed before, on or after the said appointed day, which appoints an existing bank to be the executor or administrator, such appointment shall be deemed to be the appointment of the new bank concerned as executor or administrator, as the case may be.
- (2) No testamentary disposition shall be invalidated by reason only of the operation of any of the provisions of this Order.

8. Legal proceedings, etc.

- (1) No legal proceedings, arbitration proceedings or application to any lawful authority, pending immediately before the appointed day by or against an existing bank, shall be suspended, terminated or in any way affected by reason only of any of the provisions of this Order, but they shall be prosecuted or continued by or against the new bank concerned.
- (2) Any judgment or award which has been obtained by or against an existing bank, and not fully satisfied before the appointed day, shall thereafter be enforceable only by or against the new bank concerned.
- (3) In any legal proceedings or arbitration concerning any right or liability transferred to, or vested in, either new bank pursuant to this Order, a certificate under the hand of the manager of a branch of the new bank concerned that such right or liability has been so transferred to, or vested in, such new bank shall be admissible as evidence of such transfer or vesting.

9. Employees and pension schemes

- (1) Any person, other than an excluded employee, who is employed in an existing bank immediately before the appointed day, and who is not then under notice of dismissal or resignation, shall on such day become an employee of the new bank on the same terms of service, and such employment with such existing bank and the new bank concerned 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 Swaziland of which persons, other than excluded employees, employed in the undertakings of Barclays Bank International Limited are members shall on and after the appointed day be construed and have effect as if it was a reference to Barclays Bank of Swaziland Limited 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 Barclays Bank International Limited prior to the appointed day shall be taken into account as if it were service with Barclays Bank of Swaziland Limited.
- (3) Standard Bank Swaziland Limited shall within a reasonable time after the appointed day establish in Swaziland a new pension fund for its employees on the pensionable staff, other than excluded employees, giving pensions, benefits and rights not less favourable than those given by The Standard Bank Limited Pension Fund (being the Pension Fund presently operated under the auspices of The Standard Bank Limited), and for the purpose of ascertaining and calculating any rights to benefits under such new pension fund service with The Standard Bank Limited prior to the appointed day shall be taken into account as if it were service with Standard Bank Swaziland Limited.
- (4) The Standard Bank Limited shall pay the trustees of the new pension fund referred to in subsection (3) the capital value (as determined by the actuaries of The Standard Bank Limited Pension Fund) of the pension expectation of each employee transferred from the service of The Standard Bank Limited to Standard Bank Swaziland Limited which has accrued according to the rules of The Standard Bank Limited Pension Fund as at the date of his or her transfer.

- (5) 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 subsections (2), (3), (4) or (5).

10. Evidence of books, documents, etc.

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

11. Registration of transfers

In the case of property deemed to have been transferred to, and vested in, either new bank pursuant to this Order, in respect of the transfer of which any 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 such 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 such 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. Exemption from stamp duties, etc.

Notwithstanding any other 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 or vesting of any property pursuant to this Order on account of anything done under [section 11](#).

13. Minister empowered to enter into certain agreement

The Minister may enter into a written agreement with either of the new banks whereby any property or liability of an existing bank shall be excluded from the provisions of this Order.

14. New banks licensed under Financial Institutions Order, No. 19 of 1973

Notwithstanding anything to the contrary in the Financial Institutions Order, No. 19 of 1973, each new bank shall be deemed to be duly licensed in terms of such Order to carry on the business of a financial institution in Swaziland with effect from the appointed day, and the Registrar shall issue it with the requisite licence against payment of any prescribed fee, which licence shall be valid for a period of 12 months from the date of the issue thereof:

Provided that such bank shall within 30 days from the appointed day furnish the Registrar with the relevant documents and particulars mentioned in section 8(3) of such Order.