

# PROJET DE LOI

ENTITLED

## **The Barclays Bank (Bailiwick of Guernsey) Law, 1984 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* Ordres en Conseil Vol. XXVIII, p. 552. See also the Barclays Bank (Bailiwick of Guernsey) Law, 1984 (Appointed Day) Ordinance, 1984 (Recueil d'Ordonnances Tome XXIII, p. 225).

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## **The Barclays Bank (Bailiwick of Guernsey) Law, 1984**

### **WHEREAS –**

- (1) Barclays Bank PLC (hereinafter referred to as "**Barclays**") is a public company incorporated under the Companies Acts 1862 to 1890 as a company limited by shares;
- (2) Barclays Bank International Limited (hereinafter referred to as "**BBI**") is a private company limited by shares, originally established by Royal Charter in 1836, reincorporated by the Colonial Bank Act 1925 and subsequently registered by its present name under the Companies Acts 1948 to 1967, and is a wholly-owned subsidiary of Barclays;
- (3) Both Barclays and BBI are recognised banks under the Banking Act 1979 and Barclays carries on the business of banking and holds property in the Bailiwick of Guernsey (hereinafter referred to as "**the Bailiwick**"), and elsewhere, BBI with its subsidiaries and associated companies being principally concerned in the conduct of the international business of the Barclays group of companies;
- (4) By virtue of the Barclays Bank Act 1984 the undertaking of Barclays, in so far as any portion thereof may be vested in BBI by virtue of that Act, shall be transferred to, and vest in, BBI to the intent that BBI shall succeed to the whole business of Barclays, and to the right to use the name "Barclays

Bank", as if in all respects BBI were the same person in law as Barclays on such day as shall be determined for the purposes of that Act by the directors of Barclays under section 3 of that Act, and on the said appointed day it is further provided under section 4 of that Act that the name of Barclays shall be changed to Barclays PLC and the name of BBI shall be changed to Barclays Bank PLC;

- (5) It is expedient that provision be made for the transfer to BBI of the undertaking of Barclays in the Bailiwick and that the said transfer should be effected without interference with the conduct and continuity of that business;
- (6) It is further expedient that the transfer of any portion of the undertaking of Barclays which falls to be governed by the law of any part of the Bailiwick should be effected as provided in this Law and that the other provisions contained in this Law relative thereto and consequential thereon should be enacted:

**NOW THEREFORE the States**, in pursuance of their Resolution of the 25<sup>th</sup> day of April, 1984, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

**Transfer of Barclays' undertaking to BBI.**

1. On the appointed day the transferred undertaking shall, by virtue of this Law, and without further assurance, be transferred to, and vest in, BBI to the intent that BBI shall succeed to the whole business of Barclays, and to the right to use the name "Barclays Bank", as if in all respects BBI were the same person in law as Barclays.

**Provisions as to trust property transferred.**

2. (1) Any property transferred to, and vested in, BBI by virtue of this Law which immediately before the appointed day was held by Barclays, 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 judicial trustee appointed by order of any court, or in any other fiduciary capacity whatsoever, shall, on and from the appointed day, be held by BBI, whether alone or jointly with such other person, in the same capacity upon the trusts, and with and subject to the powers, provisions, liabilities and obligations, applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which (whether alone or by the operation of the Laws of 1969) any property became vested in Barclays in any such fiduciary capacity (including in the case of a will any grant of probate thereof), and any provision therein or any existing contract or arrangement for the payment to, or retention by, Barclays of remuneration for its services in any such fiduciary 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 (whether original or by the operation of the Laws of 1969) to Barclays, other than a reference (however worded and whether express or implied) to terms and conditions of Barclays or to a scale of fees of Barclays, there were substituted a reference to BBI.

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

**Supplementary provisions as to transfer.**

3. Without prejudice to the generality of the foregoing provisions of this Law but subject to any provision thereof to the contrary effect, the following

provisions shall have effect in relation to the transferred undertaking –

- (a) every existing contract to which Barclays was a party (whether in writing or not) shall have effect on and from the appointed day as if –
  - (i) BBI had been a party thereto instead of Barclays,
  - (ii) for any reference (however worded and whether express or implied) to Barclays there were substituted, as respects anything falling to be done on or after the appointed day, a reference to BBI, and
  - (iii) any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of Barclays were, as respects anything falling to be done on or after the appointed day, a reference to the directors of BBI or, as the case may require, to such director, officer, or employee of BBI as BBI may appoint for that purpose or, in default of appointment, to the director, officer or employee of BBI who corresponds as nearly as may be to the first-mentioned director, officer or employee,
- (b) sub-paragraphs (ii) and (iii) of paragraph (a) of this section shall apply to any statutory provision and to

any provision of any existing contract to which Barclays was not a party and sub-paragraphs (i), (ii) and (iii) of that paragraph shall apply to any provision of any other existing document (not being a contract or a will) as, in any such case, they apply to a contract to which the aforesaid paragraph (a) applies,

- (c) any account between Barclays and a customer shall, on and from the appointed day, become an account between BBI 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 BBI or of the customer to vary the conditions or incidents subject to which any account is kept,

- (d) any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to Barclays (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 BBI,
- (e) any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, Barclays, or payable at any place of business of Barclays, whether so drawn, given, accepted or endorsed before, on or after the appointed day, shall

have the same effect, on and from the appointed day, as if it had been drawn on, or given to, or accepted or endorsed by, BBI, or were payable at the same place of business of BBI,

- (f) the custody of any document, goods or other thing held by Barclays as bailee at any branch or office of Barclays within the Bailiwick shall pass to BBI on the appointed day, and the rights and obligations of Barclays under any contract of bailment relating to any such document, goods or thing shall be transferred on that day to BBI,
- (g)
  - (i) any security held immediately before the appointed day by Barclays, or by a nominee of or trustee for Barclays, as security for the payment or discharge of any debt or liability (whether present or future, actual or contingent) shall, on and from the appointed day, be held by, or, as the case may require, by that nominee or trustee for, BBI and, to the extent of that debt or liability, be available to BBI as security for the payment or discharge of such debt or liability,
  - (ii) (A) in any case where immediately before the appointed day Barclays is under any liability to BBI in respect of, or in connection with, which Barclays, or a nominee of or trustee for Barclays,



holds security, that liability shall, for the purpose of enforcing or realising that security, be deemed to continue in effect notwithstanding the transfer to BBI of that liability by or under this Law,

(B) in any case where immediately before the appointed day BBI is under any liability to Barclays in respect of, or in connection with, which BBI, or a nominee of or trustee for BBI, holds security, that liability shall, for the purpose of enforcing or realising that security, be deemed to continue in effect notwithstanding the transfer to BBI of the transferred undertaking by this Law,

(iii) in relation to any security transferred to BBI by or under this Law and any monies thereby secured, BBI shall be entitled to the rights and priorities and be subject to the obligations and incidents to which Barclays would have been entitled and subject if it had continued to hold the security,

(iv) any security referred to in the foregoing provisions of this paragraph which extends to future advances or liabilities shall, on and from

the appointed day, be held by, and be available to, BBI as security for the payment or discharge of future advances by, and future liabilities to, BBI to the same extent and in the same manner in all respects as future advances by, or liabilities to, Barclays or, as the case may be, BBI were secured thereby immediately before that day,

- (h) where by virtue of this Law any right or liability becomes a right or liability of BBI, BBI 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 or liability as if it had at all times been a right or liability of BBI; and any legal proceedings or applications to any authority pending immediately before the appointed day by or against Barclays may be continued by or against BBI,
- (i) any judgment or award obtained by or against Barclays and not fully satisfied before the appointed day shall, to the extent to which it is enforceable by or against Barclays, be enforceable by or against BBI.

**Contracts of employment.**

4. Paragraph (a) of section 3 (Supplementary provisions as to transfer) of this Law applies to a contract for the employment of any person by Barclays, and

employment with Barclays and BBI under any such contract shall be deemed for all purposes to be a single continuing employment.

**Pensions.**

5. (1) The trust deeds and rules constituting or relating to the Barclays Bank PLC Pension Fund and the Martins Bank Superannuation Scheme 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 Barclays there were substituted a reference to BBI.

(2) No officer or employee of Barclays who, by virtue of this Law becomes an officer or employee of BBI shall be entitled as of right to participate in the Barclays Bank International Limited U.K. Staff Pension Fund (1964) or any other pension fund established by BBI.

**Evidence: books and documents.**

6. (1) All books and other documents which would before the appointed day have been evidence in respect of any matter for or against Barclays shall be admissible in evidence in respect of the same matter for or against BBI.

(2) In this section the expression "**documents**" includes, in addition to a document in writing –

- (a) any map, plan, graph or drawing,
- (b) any photograph,
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid

of some other equipment) of being reproduced therefrom, and

- (d) any film, microfilm, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom.

**Application of the Bankers' Books Evidence (Guernsey) Law, 1954.**

7. (1) On and from the appointed day the Bankers' Books Evidence (Guernsey) Law, 1954 (hereinafter referred to as "**the Law of 1954**")<sup>a</sup>, shall apply to the banker's books of Barclays transferred to BBI by this Law, and to the entries made therein before the appointed day, as if such books were the books of BBI.

(2) For the purposes of section 6 of the Law of 1954, banker's books so transferred to BBI shall be deemed to have been the ordinary books of BBI 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 "**banker's books**" has the same meaning as in subsection (1) of section 1 of the Law of 1954.

**Evidence as to the transfer of property.**

8. Any document made or executed on or after the appointed day whereby BBI, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by

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<sup>a</sup> Ordres en Conseil Vol. XVI, p. 24; No. XII of 1984.

Barclays immediately before the appointed day, whether alone or jointly with any other person, shall be sufficient evidence that the interest of Barclays in such property became vested in BBI by or under this Law.

**Transfer of interests in real property.**

9. The transfer or vesting of an interest in real property by or under this Law shall not –

- (a) constitute an assignment, transfer, devolution, parting with possession or other disposition of that interest for the purposes of any provision relating to assignment, transfer, devolution, parting with possession or other disposition contained in any instrument concerning that interest,
- (b) give rise to any forfeiture,
- (c) invalidate or discharge any contract or security.

**Saving for enactments concerning banking institutions.**

10. Nothing in the foregoing provisions of this Law shall exempt Barclays or BBI or any other subsidiary of Barclays from the provisions of any enactment regulating the carrying on of the business of any of them in the Bailiwick.

**Appointed day.**

11. The appointed day shall be such day as the States may by Ordinance appoint, being the same day as the appointed day for the purposes of section 3 of the Barclays Bank Act 1984.

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**NOTE**

*In accordance with the provisions of the Barclays Bank (Bailiwick of Guernsey) Law, 1984 (Appointed Day) Ordinance, 1984, section 1, the "appointed day" for the purposes of this section is 1st January, 1985.*

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**Cost of Law.**

**12.** All the costs, charges and expenses preliminary to, and of and incidental to, the preparing, applying for, obtaining and passing of this Law or otherwise in relation thereto shall be paid by Barclays.

**Interpretation.**

**13.** (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

**"the appointed day"** means the day appointed under section 11 of this Law,

**"the Bailiwick"** means the Bailiwick of Guernsey,

**"Barclays"** means Barclays Bank PLC,

**"BBI"** means Barclays Bank International Limited,

**"customer"** means any person having a banking account or other dealing, transaction or arrangement with Barclays or, as the case may be, BBI,

**"enactment"** includes an Order in Council, a Law, an Act of

Parliament, an Ordinance and any order, rule or regulation made under any enactment,

**"existing"** means existing, outstanding or in force immediately before the appointed day,

**"the Laws of 1969"** means the Barclays Bank Act 1969 and the Barclays Bank (Guernsey) Law, 1969<sup>b</sup>, by which the undertaking of Martins Bank Limited was transferred to Barclays,

**"liabilities"** includes duties and obligations of every description (whether present or future, actual or contingent),

**"property"** means property and assets of every description, both real and personal and includes property held on trust and securities, rights, benefits and powers of every description,

**"security"** includes a bond, 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),

**"States"** means the States of Guernsey,

**"subsidiary"** has the meaning assigned to it by section 154 of the Companies Act 1948,

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<sup>b</sup> Ordres en Conseil Vol. XXII, p. 231.

**"transferred undertaking"** means all existing property and liabilities of Barclays, of whatsoever nature and whether or not Barclays holds or is subject to the same beneficially or in any fiduciary capacity, except –

- (a) the directors' minute books and any books and documents relating exclusively to the shareholders and constitution of Barclays,
- (b) duties and obligations of Barclays in respect of its share capital,
- (c) the shares in BBI owned by Barclays, and
- (d) any existing stock option or ownership scheme or profit sharing scheme established by Barclays for the benefit of employees of Barclays or its subsidiaries or any of them,

**"will"** includes a codicil and any other testamentary writing.

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

(3) Any such reference to property of Barclays is a reference to property of Barclays whether situated in the Bailiwick or elsewhere.

(4) Any such reference to rights or liabilities of Barclays is a reference to rights to which Barclays is entitled or, as the case may be, to liabilities



to which Barclays is subject, under the law of any part of the Bailiwick or under the law of any country or territory outside the Bailiwick.

(5) The Interpretation (Guernsey) Law, 1948<sup>c</sup>, shall apply to the interpretation of this Law throughout the Bailiwick.

(6) Any reference in this Law to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

**Citation.**

**14.** This Law may be cited as the Barclays Bank (Bailiwick of Guernsey) Law, 1984.

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**NOTE**

*The Law received Royal Sanction on 22nd November, 1984 and was registered on the Records of the Island of Guernsey on 11th December, 1984.*

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.