

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Barclays Bank (Guernsey) Law, 1969

(Registered on the Records of the Island of Guernsey
on the 11th day of November, 1969.)



1969.

XVIII

1969

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 11th day of November, 1969, before Sir William Arnold, Kt., C.B.E., Bailiff; present :—Bertram Guy Blampied, Claude Fortescue Nason, Stanley Walter Gavey, Esquires, Gilbert Carey de Jersey, Esquire, C.B., Albert Victor Dorey, Esquire, Laurence Francis de Vic Carey, Esquire, C.B., C.B.E., D'Arcy George Le Tissier, William Burton Fox, Esquires, Edward James Lainé, Esquire, C.B.E., D.F.C., Edward Martel, and Jean Le Pelley, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 24th day of September, 1969, ratifying a *Projet de Loi* entitled "The Barclays Bank (Guernsey) Law, 1969", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth :—

At the Court at Balmoral

The 24th day of September 1969

PRESENT,

The Queen's Most Excellent Majesty

LORD PRESIDENT

LORD BESWICK

MR. SECRETARY ROSS

SIR MICHAEL ADEANE

MR. ROBERTS

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 19th day of September 1969, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolution of the 25th day of June 1969, the States of Deliberation at a meeting held on the 30th day of July 1969, approved a Bill or “Projet de Loi” entitled “The Barclays Bank (Guernsey) Law, 1969” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The

Barclays Bank (Guernsey) Law, 1969" and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

W. G. Agnew.

Projet de Loi referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

The Barclays Bank (Guernsey) Law, 1969

ARRANGEMENT OF SECTIONS

Section

1. Transfer of Martins' undertaking to Barclays.
2. Provisions as to trust property transferred.
3. Employment of officers, clerks and servants.
4. Pensions.
5. Supplementary provisions as to transfer.
6. References to Martins in wills.
7. Evidence and books and documents.
8. Application of Bankers' Books Evidence (Guernsey) Law, 1954.
9. Costs of Law.
10. Interpretation.
11. Citation.

PROJET DE LOI

ENTITLED

The Barclays Bank (Guernsey) Law, 1969

WHEREAS:—

(1) Barclays Bank Limited (hereinafter called “Barclays”) is a company incorporated in England under the Companies Acts, 1862 to 1890, as a company limited by shares and carries on in the Island of Guernsey (hereinafter called “the Island”) the business of banking, including the business of acting as executor and trustee:

(2) Martins Bank Limited (hereinafter called “Martins”) is a company incorporated in England under the Companies Acts, 1862 to 1880, as a company limited by shares and also carries on in the Island the business of banking, including the business of acting as executor and trustee:

(3) In pursuance of a scheme of arrangement under section two hundred and six of the Companies Act, 1948, between Martins and its members, which became effective on the first day of November, nineteen hundred and sixty-eight, Martins has become and now is a wholly-owned subsidiary of Barclays:

(4) Martins Bank Trust Company Limited is a company incorporated in England under the Companies Acts, 1948 to 1967, as a company limited by shares and carries on in the United Kingdom the business of acting as executor and trustee and is a wholly-owned subsidiary of Martins:

(5) By virtue of the Barclays Bank Act 1969 the undertaking of Martins, in so far as any portion thereof may be vested in Barclays by virtue of that Act, shall be transferred to, and vested in, Barclays

on the first day of January, nineteen hundred and seventy, or on such earlier day as may be appointed for the purposes of that Act by the Board of Trade by order made under subsection (3) of section two of that Act:

(6) For the better conduct of the businesses of Barclays and Martins in the Island it is expedient to make provision for the fusion of their undertakings and that the transfer of any portion of the undertaking of Martins which falls to be governed by the law of the Island 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 twenty-fifth day of June, nineteen hundred and sixty-nine, have approved the following provisions, which, subject to the sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

1. (1) On the appointed day all existing property, rights, liabilities and obligations of Martins of whatsoever nature, and whether or not assignable at law or in equity, and whether Martins holds or is subject to the same beneficially or in any fiduciary capacity, shall, by virtue of this Law and without further assurance, be transferred to, and vest in, Barclays to the intent that Barclays shall succeed to the whole undertaking of Martins and to the right to use the name "Martins Bank".

Transfer of
Martins'
undertaking
to Barclays.

(2) No transfer or vesting effected by virtue of this Law shall—

(a) operate as a breach of covenant or condition against alienation:

- (b) give rise to any forfeiture;
- (c) invalidate or discharge any contract or security; or
- (d) operate so as to merge any leasehold interest so transferred to, or vested in, Barclays in the reversion expectant thereon held by Barclays immediately before the appointed day, or to merge any leasehold interest held by Barclays immediately before the appointed day in the reversion expectant thereon transferred to, or vested in, Barclays by virtue of this Law.

Provisions
as to trust
property
transferred.

2. (1) Any property or rights transferred to, and vested in, Barclays by virtue of this Law which immediately before the appointed day were held by Martins, whether alone or jointly with any other person—

- (a) as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will, and whether originally so appointed or not, and whether appointed under hand or seal or by order of any court;
- (b) as executor of the will of a deceased person;
- (c) as administrator of the estate of a deceased person;
- (d) as judicial trustee appointed by order of any court; or
- (e) in any other fiduciary capacity whatsoever;

shall, on and from the appointed day, be held by Barclays, 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 any property or rights became vested in Martins 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, Martins 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 to Martins, other than a reference (however worded and whether express or implied) to terms and conditions of Martins or to a scale of fees of Martins, there were substituted a reference to Barclays.

3. Any officer, clerk or servant employed by Martins immediately before the appointed day shall, in pursuance of this Law, on that day become an officer, clerk or servant (as the case may be) of Barclays on terms and conditions of employment not less favourable than those on which he was so employed immediately before the appointed day; and such employment with Martins and Barclays respectively shall be deemed for all purposes to be a single continuing employment.

Employment of officers, clerks and servants.

4. (1) The trust deeds and rules constituting or relating to the Martins Bank Non-Contributory Pension Scheme, the Martins Bank Superannuation Fund, the Martins Bank Limited Non-Contributory Pensions Scheme for Messenger Staff, the Martins Bank Death Benefit Fund and the Martins Bank Limited Widows and Orphans Fund 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 Martins there were substituted a reference to Barclays.

Pensions.

(2) No officer, clerk or servant of Martins who, by virtue of this Law, becomes an officer, clerk or servant of Barclays shall be entitled as of right to participate in the Barclays Bank Pension Fund or to become a member of the Barclays Bank Widows Fund.

Supple-
mentary
provisions
as to
transfer.

5. (1) The succeeding provisions of this section shall have effect without prejudice to the generality of the foregoing provisions of this Law but subject to any provision therein to the contrary.

(2) Every existing contract to which Martins was a party (whether in writing or not) shall on and from the appointed day be construed and have effect as if—

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

(3) The provisions of paragraphs (b) and (c) of subsection (2) of this section shall apply to any statutory provision, to any provision of any existing contract to which Martins was not a party and to any provision of any other existing document (not being a contract or a will) as they apply in relation to a contract to which subsection (2) of this section applies.

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

(5) Any existing instruction, direction, mandate, power of attorney, authority or consent given to Martins (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 Barclays.

(6) Any negotiable instrument or order for 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, Martins, or payable at any place of business of Martins, 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, Barclays, or payable at the same place of business of Barclays.

(7) Any security transferred to Barclays by virtue of this Law which immediately before the appointed day was held by Martins as security for the payment or discharge of any debt or liability

or obligation (whether present or future, actual or contingent) shall, on and from the appointed day, be held by, and be available to, Barclays as security for the payment or discharge of such debt or liability or obligation; and any such security which extends to future advances or liabilities shall, on and from the appointed day, be held by, and be available to, Barclays as security for future advances by, and future liabilities to, Barclays in the same manner in all respects as future advances by, or liabilities to, Martins were secured thereby immediately before that day.

(8) Where by the operation of any of the provisions of this Law any right, liability or obligation becomes a right, liability or obligation of Barclays, Barclays 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 Barclays; and any legal proceedings or applications to any authority pending immediately before the appointed day by or against Martins may be continued by or against Barclays.

(9) Any judgment or award obtained by or against Martins and not fully satisfied before the appointed day shall be enforceable by or against Barclays.

References
to Martins
in wills.

6. (1) No testamentary gift shall be adeemed by reason only of the operation of any of the provisions of this Law.

(2) Any will, whether made before, on or after the appointed day, by a person dying on or after the appointed day which appoints or purports to appoint Martins to be executor or trustee thereof shall be construed and have effect as if for any reference therein to Martins as such executor or trustee or otherwise in connection with such appointment, other than a reference (however worded and whether express or implied) to terms and conditions of Martins published before the date of the will or to a scale of fees of Martins published before the date of the will, there were substituted a reference to the Trust Company, and, in a case where the Trust Company did not exist at the date of the will, as if it had then existed.

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

(2) In this section "documents" includes, in addition to documents 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 Bankers'
Books
Evidence
(Guernsey)
Law, 1954.

8. (1) On and from the appointed day, the Bankers' Books Evidence (Guernsey) Law, 1954, shall apply to the banker's books of Martins transferred to Barclays by virtue of this Law, and to entries made therein before the appointed day, as if such books were the books of Barclays.

(2) For the purposes of section six of the said Law of 1954, banker's books so transferred to Barclays shall be deemed to have been the ordinary books of Barclays 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 "banker's books" has the same meaning as in the said Law of 1954.

Costs of
Law.

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

Interpreta-
tion.

10. (1) In this Law, unless the subject or context otherwise requires—

"the appointed day" means the first day of January, nineteen hundred and seventy, or such earlier day as may be appointed by the Board of Trade by order made under subsection (3) of section two of the Barclays Bank Act 1969;

"Barclays" means Barclays Bank Limited;

"customer" includes any person having a banking account or other dealing, transaction or arrangement with Barclays or Martins (as the case may be) in the course of business;

"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 or in force (as the case may require) immediately before the appointed day;

“Martins” means Martins Bank Limited as existing;

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

“the Trust Company” means Martins Bank Trust Company Limited;

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

(2) Any reference in this Law to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by, or by virtue of, any subsequent enactment.

11. This Law may be cited as the Barclays Bank Citation. (Guernsey) Law, 1969.

R. H. VIDELO,
Her Majesty's Greffier.