

Malawi

Standard Bank Limited and Barclays Bank D.C.O. Act Chapter 44:04

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Standard Bank Limited and Barclays Bank D.C.O. Act
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Standard Bank Limited and Barclays Bank D.C.O. Act

Chapter 44:04

Commenced on 1 July 1971

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to make provision to give effect to the intention of The Standard Bank Limited and Barclays Bank D.C.O. to transfer the assets and liabilities of the said Banks relating to their businesses in Malawi to the National Bank of Malawi, a new local commercial banking company of which the said Banks are to be members; and for purposes connected therewith and incidental thereto

1. Short title

This Act may be cited as the Standard Bank Limited and Barclays Bank D.C.O. Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**appointed day**” means the day appointed as the date of commencement pursuant to [section 1](#);

“**Barclays Bank D.C.O.**” means Barclays Bank D.C.O., a company incorporated in England with limited liability, carrying on the business of banking in Malawi;

“**customer**” includes any person having an existing banking account or other dealing, transaction or arrangement with The Standard Bank Limited or with Barclays Bank D.C.O., as the case may be, in the course of business;

“**excluded employee**” means any person who, not being a citizen of Malawi, is, immediately before the appointed day, employed in the undertaking of The Standard Bank Limited or Barclays Bank D.C.O. as the case may be, and who has entered into a contract of service which requires him to serve The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, in Malawi or elsewhere if called upon to do so;

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

“**liabilities**” includes duties and obligations of every description;

“**Minister**” means the Minister for the time being responsible for finance;

“**the new bank**” means the National Bank of Malawi, a company incorporated in Malawi for the purpose of carrying on the business of banking in association with The Standard Bank Limited and Barclays Bank D.C.O.;

“**property**” means real and personal property of every description and includes securities and powers and property held in trust;

“**security**” includes a mortgage or charge, whether legal or equitable, a debenture, bill of exchange, promissory note, guarantee, lien, pledge, whether actual or constructive, hypothecation, indemnity or undertaking or any other means whatsoever of securing the payment or discharge of a debt, liability or obligation, whether present or future, actual or contingent;

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

“the undertaking of Barclays Bank D.C.O.” means the business of, and all of the property vested in, or belonging to, or held by Barclays Bank D.C.O. in Malawi immediately before the appointed day, and includes all such property, wherever situate, then so vested in, belonging to and held by Barclays Bank D.C.O. in respect of, or attributable to, its Malawi banking operations, and all of the liabilities to which Barclays Bank D.C.O. was subject in respect of its banking business in Malawi immediately before the appointed day, but does not include any property which by agreement between the Minister and Barclays Bank D.C.O. with the concurrence of The Standard Bank Limited, shall be excluded from the provisions of this Act, and which excluded property is specified by the Minister in a Notice published in the *Gazette* within seven days after notice of commencement of this Act is given pursuant to [section 1](#);

“the undertaking of The Standard Bank Limited” means the business of, and all of the property vested in, or belonging to, or held by The Standard Bank Limited in Malawi immediately before the appointed day, and includes all such property, wherever situate, then so vested in, belonging to and held by The Standard Bank Limited in respect of, or attributable to, its Malawi banking operations, and all of the liabilities to which The Standard Bank Limited was subject in respect of its banking business in Malawi immediately before the appointed day, but does not include any property which by agreement between the Minister and The Standard Bank Limited with the concurrence of Barclays Bank D.C.O., shall be excluded from the provisions of this Act, and which excluded property is specified by the Minister in a Notice published in the *Gazette* within seven days after notice of commencement of this Act is given pursuant to [section 1](#);

“will” includes codicil and any other testamentary writing.

3. Transfer of the undertakings of The Standard Bank Limited and Barclays Bank D.C.O.

- (1) On the appointed day the respective undertakings of The Standard Bank Limited and of Barclays Bank D.C.O. shall be transferred to and vest in the new bank to the extent of the interests of The Standard Bank Limited and of Barclays Bank D.C.O. in such undertakings.
- (2) The transfers and vestings referred to in subsection (1) shall operate by virtue of this Act and without further assurance to the intent that the new bank shall succeed to the whole of the respective undertakings of The Standard Bank Limited and Barclays Bank D.C.O.
- (3) If any portion of the undertakings referred to in subsections (1) and (2) cannot be vested in the new bank by reason of the fact that a transfer of such portion is governed otherwise than by the law of Malawi then The Standard Bank Limited, or Barclays Bank D.C.O., as the case may be, shall, as soon as is practicable after the appointed day, take all necessary steps for the purpose of securing that such portion is effectively transferred to the new bank.
- (4) A transfer or vesting effected by this Act—
 - (a) shall not operate as a breach of any covenant or condition against alienation, whether personal or otherwise, attaching to the title to any property so transferred or vested;
 - (b) shall not give rise to any forfeiture;
 - (c) shall not invalidate or discharge any contract or security;
 - (d) shall 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 or rights transferred to or vested in the new bank by virtue of this Act which, immediately before the appointed day, were held by The Standard Bank Limited or Barclays Bank D.C.O., respectively, whether solely or jointly with any other person—
 - (a) as trustee or custodian trustee under any trust deed, settlement, covenant 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 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 or otherwise;
 - (f) as trustee in bankruptcy of the estate of any bankrupt person;
 - (g) in any other fiduciary capacity whatsoever, shall, on and after the appointed day, be held by the new bank, whether solely 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 The Standard Bank Limited or Barclays Bank D.C.O., respectively, in any such capacity as is mentioned in subsection (1) (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 The Standard Bank Limited or Barclays Bank D.C.O., respectively, of 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 for any reference therein to The Standard Bank Limited or to Barclays Bank D.C.O., respectively, other than a reference (however worded and whether express or implied) to terms and conditions of The Standard Bank Limited or Barclays Bank D.C.O., respectively, or to a scale of fees of the said The Standard Bank Limited or Barclays Bank D.C.O., respectively, there were substituted a reference to the new bank.

5. Contracts, etc.

All contracts, agreements, conveyances, deeds, leases, licences, undertakings and other instruments, vested or transferred by this Act, whether analogous to the foregoing or not, entered into by, or made with, or addressed to The Standard Bank Limited or Barclays Bank D.C.O., respectively (whether solely or with any other person), before, and in force on, the appointed day shall, as from that day, be binding and of full force and effect in every respect against or in favour of the new bank as fully and effectively as if, instead of The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, the new bank had been a party thereto or bound thereby, or entitled to the benefit thereof.

6. Banking business

Without prejudice to the generality of any other provision of this Act, the following provisions shall have effect with relation to the banking business of The Standard Bank Limited and Barclays Bank D.C.O., respectively, in Malawi—

- (a) any account between The Standard Bank Limited and a customer or between Barclays Bank D.C.O. and a customer shall, on and after the appointed day become an account between the new bank and such customer, with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if such account between The Standard Bank Limited and the customer, or between Barclays Bank D.C.O. and the customer, as the case may be, 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—

- (i) nothing in this paragraph shall affect any right of the new bank or of the customer to vary the conditions and incidents subject to which the account is kept; and
- (ii) deposits transferred from The Standard Bank Limited or Barclays Bank D.C.O., respectively, to the new bank pursuant to this Act shall, during a period of thirty days from the date of

commencement of this Act, be withdrawable on demand without prejudice to any right of set-off or charge which the new bank may have thereover;

- (b) any security held by The Standard Bank Limited or by Barclays Bank D.C.O., respectively, as security for the payment of debts or liabilities, whether present or future, actual or contingent, of any person, which is transferred to the new bank by virtue of this Act shall, on and after the appointed day, be held by and be available to the new bank for the payment of such debts and liabilities to the said new bank, and, where the moneys secured by such a security include future advances to or liabilities of such person, the security shall, as from that day, be held and be available to the new bank as security for future advances to that person by, and future liabilities of that person to, the said new bank to the same extent to which future advances by, or liabilities to, The Standard Bank Limited or Barclays Bank D.C.O., respectively, were secured thereby immediately before the appointed day, and a transfer effected by this Act of any such security shall not operate as a release of such security notwithstanding any relevant rule of law or statutory provision to the contrary;
- (c) the new bank shall, in relation to any security transferred to it by virtue of this Act, and to the moneys thereby secured, be entitled to the same rights and priorities, and be subject to the same obligations and incidents, as The Standard Bank Limited or Barclays Bank D.C.O., respectively, would have been entitled and subject to if the same had continued to be held by The Standard Bank Limited or Barclays Bank D.C.O., as the case may be;
- (d) 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 The Standard Bank Limited or Barclays Bank D.C.O., respectively, or payable at any place of business of The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, 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, or payable at the same place of business of the said new bank;
- (e) 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 new bank, that bank and all other persons shall, on and after the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting any legal proceedings or any application 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 new bank;
- (f) the custody of any document, goods or other property held by The Standard Bank Limited or Barclays Bank D.C.O., respectively, as bailee for any other person at any of their respective offices or branches in Malawi shall be transferred to the new bank on the appointed day, and the rights and obligations of The Standard Bank Limited or Barclays Bank D.C.O., respectively, under any contract of bailment relating to such document, goods or property shall be transferred to the said new bank on that day.

7. Wills

- (1) Where, on or after the appointed day, any person dies domiciled in Malawi, leaving property in Malawi and a will, whether executed before, on or after the said appointed day, which appoints or purports to appoint The Standard Bank Limited or Barclays Bank D.C.O. to be executor, or executor and trustee, thereof, such will shall be construed to have effect as if for any reference therein to The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, as such executor or executor and trustee there were substituted a reference to the new bank.
- (2) No testamentary gift shall be adeemed by reason only of the operation of any of the provisions of this Act.

8. Legal proceedings, etc.

- (1) Any legal proceedings, or any arbitration proceedings, or any application to any authority, pending immediately before the appointed day by or against The Standard Bank Limited or Barclays Bank

D.C.O., respectively, shall not abate, be discontinued or be in any way prejudicially affected by reason only of any of the provisions of this Act but the same may be prosecuted or continued by or against the new bank, and any judgment or award obtained by or against The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, and not fully satisfied before the appointed day shall thereafter be enforceable by or against the said new bank.

- (2) In any legal proceedings, or arbitration proceedings, concerning any right or liability transferred to or vested in the new bank by this Act, a certificate under the hand of the manager of a branch of the said new bank that such right or liability has been so transferred to or vested in the said new bank shall be admissible evidence of that transfer or vesting.

9. Employees and pension schemes

- (1) Any person, other than an excluded employee, who is employed in the undertaking of The Standard Bank Limited, or of Barclays Bank D.C.O., respectively, immediately before the appointed day, and who is not then under notice of dismissal or resignation, shall, in pursuance of this Act, on that day become an employee of the new bank on terms and conditions of service not less favourable than his existing terms and conditions, and such employment with The Standard Bank Limited or Barclays Bank D.C.O., as the case may be, and the new bank shall be deemed for all purposes to be a single continuing employment.
- (2) Any reference to The Standard Bank Limited or to Barclays Bank D.C.O., respectively, in any trust deed or rules constituting or relating to any pension scheme or provident or superannuation fund established in Malawi of which persons, other than excluded employees, employed in the undertakings of The Standard Bank Limited or Barclays Bank D.C.O., respectively, are members shall, on and after the appointed day, be construed and have effect as if the same were a reference to the new bank 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 The Standard Bank Limited or Barclays Bank D.C.O., respectively, prior to the appointed day shall be taken into account as if it were service with the said new bank.
- (3) 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 such as is mentioned in subsection (2).

10. Evidence of books documents, etc.

- (1) All documents, records and admissions which would before the appointed day have been evidence in respect of any matter for or against The Standard Bank Limited or Barclays Bank D.C.O., respectively, shall be admissible in evidence for or against the new bank.
- (2) On and after the appointed day, the Bankers' Books Evidence Act shall apply to the books of The Standard Bank Limited and Barclays Bank D.C.O., respectively, transferred to the new bank by virtue of this Act, and to existing entries therein, as if such books were the books of the said new bank.

[Cap. 4:05]

- (3) For the purposes of sections 4 and 5 of the Bankers' Books Evidence Act, the books mentioned in subsection (2) shall be deemed to have been the ordinary books of the new bank to which they are transferred 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 the banking business of the said new bank.

[Cap. 4:05]

- (4) In this section "books" means "bankers' books" as defined in section 2 (4) of the Bankers' Books Evidence Act.

[Cap. 4:05]

11. Registration of transfers

In the case of property transferred to and vested in the new bank pursuant to this Act, in respect of the transfer of which any written law provides for registration, it shall be the duty of the proper officer of the appropriate registration authority, upon request made by or on behalf of the said new bank, to make such entries in the appropriate register as shall give effect to such transfer and, where appropriate, to issue to the said new bank a certificate of title in respect of the said property or to make the necessary amendments to the register, as the case may be, and, if presented therefor, to make endorsements on the deeds relating to the title, right or obligation concerned.

12. Exemption from stamp duties, etc.

Notwithstanding the provisions of any other written law, no 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 effected by this Act or on account of anything done under [section 11](#).