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CONSOLIDATED BANK OF KENYA ACT

NO. 5 OF 1991

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CONSOLIDATED BANK OF KENYA ACT

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NO. 5 OF 1991

CONSOLIDATED BANK OF KENYA ACT

[Date of assent: 6th June, 1991.]

[Date of commencement: 14th June, 1991.]

An Act of Parliament to make provision for the transfer of the assets and liabilities relating to the businesses of subsidiaries of the Consolidated Bank of Kenya Limited, and for connected purposes

[Act No. 5 of 1991.]

WHEREAS the Consolidated Bank of Kenya Limited (hereinafter referred to as Consolidated Bank) is a company incorporated in Kenya for the purposes of carrying on banking, executorship and trust business;**AND WHEREAS** the Consolidated Bank has acquired, or intends to acquire, the whole of the share capital of certain banks and financial institutions (hereinafter referred to as subsidiaries);**AND WHEREAS** the Government and Consolidated Bank have agreed that the undertakings and businesses of subsidiaries should be transferred to and vested in the Consolidated Bank or other subsidiaries, as provided in this Act, and that the other provisions contained in this Act should take effect;**AND WHEREAS** it is expedient that the transfers should be effected economically and without interference with the conduct and continuity of the businesses of the subsidiaries.**NOW THEREFORE BE IT ENACTED** by the Parliament of Kenya as follows—

1. Short title

This Act may be cited as the Consolidated Bank of Kenya Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Consolidated Bank**” includes any subsidiary to which undertakings are transferred and vested under section 3;

“**customer**” means any person having an existing account or other dealing, transaction or arrangement with a subsidiary in the course of banking business conducted by that subsidiary;

“**existing**” means existing or in force immediately before the vesting day;

“**liabilities**” means duties and obligations of every description, whether actual or contingent present or future;

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

“**property**” means property of every description falling to be included in the balance sheets of a subsidiary made up as at the close of business on the day preceding the vesting day in accordance with its normal practice and includes property held on trust or as bailee and securities, rights and powers of every description;

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

“**subsidiary**” means any company in respect of which Consolidated Bank is the beneficial owner of the whole of its issued share capital;

“**undertaking**”, in relation to a subsidiary, means its existing business and property vested in or belonging to or held by it and all of the liabilities to which it was subject in respect of its business immediately before the vesting day;

“**vesting day**”, in relation to any subsidiary, means the day appointed in the vesting order made in respect of that subsidiary under section 3(1);

“**vesting order**” means a vesting order made under section 3(1);

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

3. Transfer of undertaking of subsidiaries

(1) The Minister may, by notice in the *Gazette*, make an order (in this Act referred to as a vesting order) directing that the undertakings of any subsidiary shall, subject to this section, be transferred to and vest in Consolidated Bank or another subsidiary by virtue of this Act and without further assurance on such vesting day as may be appointed in the vesting order.

(2) A transfer or vesting effected by virtue of this Act—

- (a) shall not operate as a breach of any covenant or condition against alienation;
- (b) shall not give rise to any forfeiture;
- (c) shall not invalidate or discharge any contract security; and
- (d) shall operate notwithstanding any caveat, caution, inhibition or restriction made, registered or entered under any written law relating to dealings with land.

4. Trust property

(1) Any property or right vested in Consolidated Bank by virtue of this Act which, immediately before the vesting day, was held by the subsidiary from which it is transferred, whether alone or jointly with any other person—

- (a) as trustee or custodian trustee under any trust deed, settlement, covenant or any other instrument; or
- (b) as executor or trustee of the will or administrator or attorney administrator of the estate of any person; or
- (c) as judicial trustee appointed by order of any court; or
- (d) in any other fiduciary capacity,

shall, on and after the vesting day, be held by Consolidated Bank alone or jointly with such other person, in the same capacity, upon the same trusts and with and subject to the same 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 right became vested in the subsidiary 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 subsidiary of remuneration for its services in any such capacity shall, on and after the vesting day, be construed and have effect, so far as the context permits, as if, for any reference therein to the subsidiary, there were substituted a reference Consolidated Bank.

5. Contracts, etc.

All existing contracts, agreements, conveyances, deeds, leases, licences, permits, exemptions, powers of attorney, undertakings, securities and other instruments, whether analogous to the foregoing or not, entered into by, made with or granted or addressed to a subsidiary whether alone or with any other person and whether as principal or agent, shall, as from the vesting day be binding and of full force and effect in every respect against or in favour of Consolidated Bank as if, instead of the subsidiary, Consolidated Bank had been a party thereto, bound thereby or entitled to the benefit thereof and as if any reference, express or implied, to any director, officer or employee of the subsidiary were, as respects anything falling to be done on or after the vesting day, a reference to the director, officer or employee of Consolidated Bank who most nearly corresponds thereto.

6. Existing acts, etc.

Where any other written law or any existing document, other than a contract or will, contains any reference, express or implied, to a subsidiary, such reference shall, on and after the vesting day and except where the context otherwise requires, be construed as a reference to Consolidated Bank.

7. Existing business

Without prejudice to the provisions of any other section of this Act, the following provisions shall have effect in relation to the banking business of a subsidiary vested in Consolidated Bank by virtue of this Act—

- (a) any account between the subsidiary and a customer shall, on and after the vesting day, become an account between Consolidated Bank and the same customer with the same rights and subject to the same obligations and incidents, including rights of set off as theretofore, and that account shall be deemed to be a single, continuing account:

Provided that nothing in this paragraph shall affect any right of Consolidated Bank or of the customer to vary the conditions or incidents subject to which the account is kept;

- (b) any existing instruction, direction, mandate, power of attorney, authority or consent given to or by the subsidiary shall have effect, on and after the vesting day, as if given to or by Consolidated Bank;
- (c) any security held by the subsidiary for the payment of debts or liabilities, whether present or future, actual or contingent, of any person, which is transferred to Consolidated Bank by virtue of this Act shall, on and after the vesting day, be held by and be available

to Consolidated Bank as security for the payment of such debts and liabilities to Consolidated Bank, and, where the moneys secured by the security include future advances to or liabilities of such person, the security shall, as from that day, be held by and be available to Consolidated Bank as security for future advances to that person by, and future liabilities of, that person to Consolidated Bank to the same extent to which the same was held by or available to the subsidiary immediately before the vesting day as security for future advances or future liabilities;

- (d) Consolidated Bank shall, in relation to any security transferred or deemed to have been 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 subsidiary would have been entitled and subject to if the same had continued to be held by the subsidiary;
- (e) any negotiable instrument or order for payment of money, whether drawn, given, accepted or endorsed before, on or after the vesting day, which is expressed to be drawn by or on, given by or to or accepted or endorsed by the subsidiary or payable at any place of business of the subsidiary shall, on and after the vesting day, have the same effect as if it had been drawn by or on, given by or to or accepted or endorsed by Consolidated Bank, or payable at the same place of business of Consolidated Bank;
- (f) where, by the operation of the provisions of this Act, any right, liability or obligation becomes a right, liability or obligation of Consolidated Bank, that bank and all other persons shall, on and after the vesting 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 Consolidated Bank;
- (g) the custody of any documents, goods or other property held by the subsidiary as bailee for any other person shall be transferred to Consolidated Bank on the vesting day and the rights and obligations of the subsidiary under any contract of bailment relating to such documents, goods or other property shall be transferred or deemed to be transferred to Consolidated Bank on that day.

8. Wills

Where, on or after the vesting day, any person dies and a will executed by him before the vesting day appoints or purports to appoint Consolidated Bank whether alone or jointly with any other person to be executor and trustee thereof, that will shall be construed and have effect as if for any reference therein to the subsidiary as such executor or executor and trustee, there were substituted a reference to Consolidated Bank.

9. Ademption

No testamentary gift shall be adeemed by reason only of the operation of this Act.

10. Legal proceedings, etc.

(1) No existing legal or arbitration proceedings or application to any authority by or against a subsidiary shall 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 Consolidated Bank and any judgement or award obtained by or against the subsidiary and not fully satisfied before the vesting day shall thereafter be enforceable by or against Consolidated Bank.

(2) In any legal or arbitration proceedings concerning any right or liability transferred to or vested in Consolidated Bank by this Act, a certificate under the hand of the manager of a branch of Consolidated Bank that such right or liability has been so transferred to or vested in Consolidated Bank shall be *prima facie* evidence of that transfer or vesting.

(3) Nothing in this Act shall terminate or prejudicially affect the appointment of any receiver or of any receiver and manager.

11. Employees and pension schemes

(1) Any person who is employed by a subsidiary immediately before the vesting day shall on that day become an employee of Consolidated Bank on the same terms and conditions of service as his existing terms and conditions and subject to any subsisting notice of termination, resignation or variation, and such employment with the subsidiary and Consolidated Bank shall be deemed to be a single continuing employment.

(2) Any reference to a subsidiary in any trust deed or rules constituting or relating to any pension scheme or provident or superannuation fund of which persons employed by a subsidiary are members shall, on and after the vesting day, be construed and have effect as if the same were a reference to Consolidated Bank, but so that, for the purpose of ascertaining and calculating any right to benefits under such scheme or fund, service with the subsidiary up to the vesting day shall be taken into account as if it were service with Consolidated Bank.

(3) The operation of any of the provisions of this section shall not of itself give rise to a claim by any person to benefit under any scheme or fund mentioned in subsection (2).

12. Evidence of books, documents, etc.

(1) On and after the vesting day—

- (a) all documents, records and admissions which would, before the vesting day, have been evidence in respect of any matter for or against the subsidiary shall be admissible in evidence for or against Consolidated Bank;
- (b) Chapter VII of the Evidence Act (Cap. 80) shall apply to the books of the subsidiary transferred to Consolidated Bank by virtue of this Act and to existing entries therein, as if such books were the books of Consolidated Bank;
- (c) for the purposes of section 177 of the Evidence Act (Cap. 80), the books mentioned in paragraph (b) of this subsection shall be

deemed to have been ordinary books of Consolidated Bank at the time of the making of an entry therein which purports to have been made before the vesting day, and any such entry shall be deemed to have been made in the usual and ordinary course of the banking business of Consolidated Bank.

(2) In this section, “**books**” means banker’s books as defined in section 3 of the Evidence Act, (Cap. 80).

13. Exemption from tax, duties, etc.

Notwithstanding the provisions of any other written law, no corporation or other tax, no stamp or other duty and no registration fee, filing fee, banking licence fee or other fee of whatsoever nature, 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 14.

14. Duties of public officers

Every public officer having the power or duty to effect or amend any entry in any register relating to property or to issue or amend any certificate or other document effecting or evidencing title to property shall, upon request made by or on behalf of Consolidated Bank or the owner of such property, and without making any charge or receiving any fee or other payment therefor, do all such things as are by law necessary to complete the transfer of any property effected by this Act.

15. Evidence of transfer

The production of a Government Printer’s copy of a vesting order shall be conclusive evidence in all registries of the transfer and vesting in accordance with this Act of any property, security or undertaking which is transferred and vested by virtue of this Act.

16. Powers to authorize investment

(1) Notwithstanding anything to the contrary contained in any law or in any document constituting, or defining the powers of, any person to whom this section applies, the Minister may authorize any such person to invest in shares in Consolidated Bank.

(2) This section shall apply to any depositor or creditor of an institution in respect of which the Minister has issued, or purposes to issue, a vesting order under the provisions of this Act.

(3) For the purposes of this section—

- (a) “**invest**” shall include the acceptance of shares in Consolidated Bank in satisfaction of any deposit or other liability of Consolidated Bank or of any subsidiary;
 - (b) “**shares**” includes ordinary and preference shares.
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