



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**NATIONAL AND GRINDLAYS BANK (APPORTIONMENT) ACT**

NO. 24 OF 1970

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**NO. 24 OF 1970**

**NATIONAL AND GRIDLAYS BANK (APPORTIONMENT) ACT**

[Date of assent: 4th December, 1970.]

[Date of commencement: 8th December, 1970.]

**An Act of Parliament to make provision for the transfer of the assets and liabilities relating to the business of National and Grindlays Bank carried on in Kenya to two new local banking corporations; and for purposes connected therewith and incidental thereto**

[Act No. 24 of 1970, L.N. 230/1970.]

WHEREAS—

1. National and Grindlays Bank Limited (hereinafter referred to as Grindlays Bank) is a company incorporated in England with limited liability and carrying on the business of banking in Kenya:
2. The Kenya Commercial Bank Limited (hereinafter referred to as the Commercial Bank) and Grindlays Bank International (Kenya) Limited (hereinafter referred to as the International Bank) are companies incorporated in Kenya for the purpose of carrying on the business of banking in Kenya:
3. The Government and Grindlays Bank have agreed that the undertaking in Kenya of Grindlays Bank should be divided between, and transferred to and vested in, the Commercial Bank and the International Bank as provided in this Act, and that the other provisions contained in this Act should take effect:
4. It is expedient that the said division and transfer should be effected economically and without interference with the conduct and continuity of the business of banking in Kenya:

NOW THEREFORE it is ENACTED by the Parliament of Kenya, as follows:—

**1. Short title**

This Act may be cited as the National and Grindlays Bank (Apportionment) Act, 1970.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“**appointed day**” means the day appointed under section 1 of this Act;

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

“**excluded employee**” means a person mentioned in the First Schedule to this Act, or any person who is, immediately before the appointed day, employed in the undertaking of Grindlays Bank and who has entered into a contract of service which requires him to serve Grindlays Bank outside Africa if called upon so to do;

“**excluded undertaking**” means such of the undertaking of Grindlays Bank as, immediately before the appointed day, is being carried on or situate at, or pertains to, the specified branches;

“**existing**” means existing or in force, as the context may require, immediately before the appointed day;

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

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

“**new bank**” means the Commercial Bank or the International Bank as the circumstances of the case may require;

“**property**” means property of every description, including property held on trust, 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 means whatsoever of securing the payment or discharge of a debt, liability or obligation (whether present or future, actual or contingent);

“**specified branches**” means the existing branches of Grindlays Bank known as—

- (a) the Ottoman Branch, Nairobi;
- (b) the Harambee Avenue (Agriculture House) Branch, Nairobi; and
- (c) the Ottoman Branch, Mombasa;

“**the undertaking of Grindlays Bank**” means the business of, and all of the property, other than the property listed in the Second Schedule to this Act, vested in or belonging to or held by, Grindlays Bank in Kenya immediately before the appointed day, and all of the liabilities to which Grindlays Bank was subject in respect of its banking business in Kenya immediately before the appointed day;

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

### **3. Transfer of the undertaking of Grindlays Bank**

(1) On the appointed day—

- (a) the undertaking of Grindlays Bank, other than the excluded undertaking, shall be transferred to and vest in the Commercial Bank; and
- (b) the excluded undertaking shall be transferred to and vest in the International Bank,

to the extent of the existing interests of Grindlays Bank.

(2) The transfers and vestings mentioned in subsection (1) of this section shall operate by virtue of this Act and without further assurance, to the intent that the International Bank shall succeed to the whole of the excluded undertaking and the Commercial Bank shall succeed to the whole of the remainder of the undertaking of Grindlays Bank.

(3) If any portion of the undertaking of Grindlays Bank cannot be vested in a new bank by virtue of this Act by reason of the fact that a transfer of that portion is governed otherwise than by the law of Kenya, then Grindlays Bank 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 appropriate new bank.

- (4) 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 or security;
  - (d) shall operate notwithstanding any caveat, caution or warning made or entered under any written law relating to dealings with land.

#### **4. Trust property**

(1) Any property or rights transferred to, and vested in, a new bank by virtue of this Act which, immediately before the appointed day, were held by Grindlays Bank, whether alone or jointly with any other person—

- (a) as trustee or custodian trustee of 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 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 after the appointed day, be held by the new bank, 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 Grindlays Bank in any such capacity as is mentioned in subsection (1) of this section (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, Grindlays Bank of remuneration for its services in any such capacity, shall, on and after the appointed day, be construed and have effect so far as the context permits, as if for any reference therein to Grindlays Bank, other than a reference (however worded and whether express or implied) to terms and conditions of Grindlays Bank or to a scale of fees of Grindlays Bank, there were substituted a reference to the appropriate new bank.

#### **5. Contracts, etc.**

All contracts, agreements, conveyances, deeds, leases, licences, undertakings and other instruments whether analogous to the foregoing or not entered into by, or made with, or addressed to Grindlays Bank (whether alone 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—

- (a) in so far as they form part of the excluded undertaking, against or in favour of the International Bank; and
- (b) in any other case, against or in favour of the Commercial Bank,

as fully and effectively as if, instead of Grindlays Bank, the new bank concerned 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 Grindlays Bank in Kenya—

- (a) any account between Grindlays Bank and a customer shall, on and after the appointed day—
  - (i) in the case of an account at a specified branch, become an account between the International Bank and the customer; and
  - (ii) in any other case, become an account between the Commercial Bank and the 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 Grindlays Bank and the 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 paragraph shall affect any right of the new bank concerned or of the customer to vary the conditions or incidents subject to which the account is kept;

- (b) any security, held by Grindlays Bank as security for the payment of debts or liabilities (whether present or future, actual or contingent) of any person, which is transferred to a new bank by virtue of this Act shall on and after the appointed day be held by and be available to the new bank concerned as security for the payment of such debts and liabilities to that 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 by and be available to the new bank as security for future advances to that person by, and future liabilities of that person to, such bank to the same extent to which future advances by, or liabilities to, Grindlays Bank were secured thereby immediately before the appointed day;
- (c) a 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 Grindlays Bank would have been entitled and subject to if the same had continued to be held by Grindlays Bank;
- (d) 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 Grindlays Bank, or payable at any place of business of Grindlays Bank, 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 appropriate new bank, or payable at the same place of business of that 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 a 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 that new bank;

- (f) the custody of any document, goods or other property held by Grindlays Bank as bailee for any other person at any of its offices or branches in Kenya, shall be transferred to the appropriate new bank on the appointed day, and the rights and obligations of the Grindlays Bank under any contract of bailment relating to such document, goods or property shall be transferred to that new bank on that day.

## **7. Wills**

Where any person dies on or after the appointed day leaving property in Kenya and a will executed in Kenya which appoints or purports to appoint Grindlays Bank to be executor and trustee thereof, such will shall be construed and have effect as if for any reference therein to Grindlays Bank as such executor and trustee there were substituted a reference to the Commercial Bank.

## **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 Grindlays Bank 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 appropriate new bank, and any judgment or award obtained by or against Grindlays Bank and not fully satisfied before the appointed day shall thereafter be enforceable by or against the appropriate new bank.

(2) In any legal proceedings, or arbitration proceedings, concerning any right or liability transferred to or vested in a new bank by this Act, a certificate under the hand of the manager of a branch of a new bank that such right or liability has been so transferred to or vested in that bank shall be *prima facie* 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 Grindlays Bank 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 appropriate new bank on terms and conditions of service not less favourable than his existing terms and conditions, and such employment with Grindlays Bank and a new bank shall be deemed for all purposes to be a single continuing employment.

(2) Any reference to Grindlays Bank in any trust deed or rules constituting or relating to any pension scheme or provident or superannuation fund of which persons, other than excluded employees, employed in the undertaking of Grindlays Bank 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) of this section, but so that, for the purpose of ascertaining and calculating any right to benefits under such scheme or fund, service with Grindlays Bank prior to the appointed day shall be taken into account as if it were service with that new 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 such as is mentioned in subsection (2) of this section.

#### **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 Grindlays Bank shall be admissible in evidence for or against a new bank.

(2) On and after the appointed day, Chapter VII of the Evidence Act (Cap. 80) shall apply to the books of Grindlays Bank transferred to a new bank by virtue of this Act, and to existing entries therein, as if such books were the books of that new bank.

(3) For the purposes of section 177 of the Evidence Act, the books mentioned in subsection (2) of this section 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 that new bank.

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

#### **11. Exemption from duties and fees, and duties of public officers**

(1) 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 subsection (2) of this section.

(2) Every public officer having the power or duty to effect or amend any entry in a 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 a new bank, do all such things as are by law necessary to give final effect to the transfer of any property effected by this Act.

#### **12. Resolution of doubts concerning apportionment**

(1) If any doubt arises as to which of the new banks any particular portion of the undertaking of Grindlays Bank is to be transferred to, it shall be resolved by agreement between the new banks, and a certificate signed by the General Managers of both new banks recording any such agreement shall for all purposes be conclusive evidence of that agreement and of the fact that the property concerned has been transferred as stated therein.

(2) If the new banks are unable to agree as to the manner in which a doubt mentioned in subsection (1) of this section should be resolved, the matter shall be referred to the Minister whose decision thereon shall be final, and a certificate by the Minister of such decision shall for all purposes be conclusive evidence of the matters stated therein.

#### **13. Consequential transfers**

(1) Where, at any time during the period of nine months after the appointed day, any property is transferred between the new banks in order to give final effect to the

purposes of this Act, or in compliance with the wishes of an existing customer, the provisions of section 11 of this Act shall apply in respect of such transfer.

(2) Any public officer who is required to act under section 11 of this Act by virtue of subsection (1) of this section shall only do so upon production to him of a certificate, signed by the manager of a branch of the new bank to which the property concerned is transferred, that the transaction is one to which this section applies.

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FIRST SCHEDULE

[Section 2.]

EXCLUDED EMPLOYEES

J. C. Sheen  
M. C. B. Williams  
Miss M. M. McKibben  
B. B. Dawson  
N. Jones  
Mrs. M. M. Pearce  
Daudi Mabolio Simon.

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SECOND SCHEDULE

[Section 2.]

PROPERTY EXCEPTED FROM THE UNDERTAKING OF  
GRINDLAYS BANK

1. The land comprised in Plot LR 214/40 situate at Tchui Road, Nairobi, together with the house and outbuildings erected thereon and the contents and appurtenances of that house and those outbuildings.
2. The ICL 1901 Computer and its ancillary equipment situate at the Industrial Area Nairobi Branch of Grindlays Bank, together with all programmes and systems therefor, and the motor vehicles used in connexion therewith.
3. The profits and losses of the business carried on in Kenya of Grindlays Bank as ascertained at the close of business on the day preceding the appointed day.