

ABN AMRO Bank Act, 1998

Principal Act

Act. No. 1998-27

Commencement
Assent

9.7.1998
9.7.1998

ARRANGEMENT OF SECTIONS

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AN ACT TO MAKE PROVISION FOR AND IN CONNECTION WITH THE TRANSFER OF THE BUSINESS OF ABN AMRO BANK (GIBRALTAR) LIMITED TO A BRANCH OF ABN AMRO BANK N.V.

Title and interpretation.

1.(1) This Act may be cited as the ABN AMRO Bank Act, 1998.

(2) In this Act—

“the change-over date” means 1st August 1998;

“document” means a document of any description whatsoever, together with any record, tape, disc or other thing from which information of any description can be obtained by mechanical, electronic or other means;

“existing” means in existence immediately before the change-over date (whether or not in force or otherwise having legal effect at that time);

“the Gibraltar Bank” means the company which is incorporated in Gibraltar under the name ABN AMRO Bank (Gibraltar) Limited and which is a wholly owned subsidiary of the parent Bank;

“the parent Bank” means the company incorporated in the Netherlands under the name ABN AMRO Bank N.V.;

“property” means assets and liabilities and all other forms of property, whether real or personal and whether corporeal or incorporeal.

Vesting of the Gibraltar Bank's undertaking in the parent Bank.

2.(1) On the change-over date, the whole of the undertaking which, immediately before that date, is carried on by the Gibraltar Bank shall, by virtue of this Act, vest in the parent Bank.

(2) The following provisions of this Act have effect for the purpose of giving full effect to, and supplementing, the provisions of subsection (1).

Vesting of property.

3.(1) Subject to any provision of this Act making specific provision in relation to property of any description, all property which, immediately before the change-over date, is property of the Gibraltar Bank shall, by virtue of this Act (and without any assignment or other form of transfer or the need for any consent) become on that date property of the parent Bank.

(2) All property which, immediately before the change-over date, is property of the Gibraltar Bank jointly with another person shall, by virtue of this Act (and without any assignment or other form of transfer or the need for any consent) become on that date property of the parent Bank jointly with that other person.

(3) In so far as, immediately before the change-over date, any property to which subsection (1) or subsection (2) applies is subject to the rights or liabilities of any other person, those rights or liabilities shall continue on and after that date in all respects as if the parent Bank and the Gibraltar Bank were the same person in law.

(4) Without prejudice to the generality of subsections (1) to (3), those subsections apply to property held subject to any trust or other fiduciary obligation as they apply to property not so held and, accordingly, on and after the change-over date the parent Bank shall hold that property (alone or, as the case may be, jointly with any other person) subject to the same trust or fiduciary obligation as applied to the Gibraltar Bank before that date.

(5) If, immediately before the change-over date, any document or other thing is in the custody or possession of (but is not property of) the Gibraltar Bank, then, on that date that document or other thing shall, by virtue of this Act (and without the need for any consent or other dealing) pass into the custody or possession of the parent Bank to be held in all respects as if the parent Bank and the Gibraltar Bank were the same person in law.

Excluded property.

4.(1) Subject to subsection (2), nothing in this Act applies to—

- (a) any interest in land which, immediately before the change-over date, is occupied by the Gibraltar Bank for the purposes of its undertaking;
- (b) any licence held by the Gibraltar Bank under the Financial Services Act 1989 or the Financial Services (Banking) Act 1992;
- (c) any rights or liabilities or other property in which, immediately before the change-over date, no person other than the Gibraltar Bank and the parent Bank has an interest; or
- (d) any contract or other property of which the proper law is not the law of Gibraltar.

(2) If, at any time after the passing of this Act (whether before, on or after the change-over date), a tenancy falling within subsection (1)(a) is assigned by the Gibraltar Bank to the parent Bank, then, without prejudice to the operation of section 62(2)(c) of the Landlord and Tenant Act 1983 (assignment of tenancy from one member of a group to another not to be treated as a change in the person of the tenant) nothing in section 69 of that Act (consents to assignment) shall apply in relation to that assignment.

Pension scheme.

5.(1) Without prejudice to the generality of sections 2 and 3, any continuing obligation of the Gibraltar Bank under the current pension scheme shall, by virtue of those sections, become on the change-over date an obligation of the parent Bank; and on and after that date the current pension scheme shall have effect as if the parent Bank and the Gibraltar Bank were the same in law.

(2) In subsection (1), “the current pension scheme” means the pension scheme which is in existence immediately before the change-over date for the benefit of eligible employees (within the meaning of the scheme) of the Gibraltar Bank and their dependants.

Documents.

6.(1) Subject to any specific provision made by the following provisions of this Act in relation to a document or reference of a particular description, as respects anything done or falling to be done, or any other thing occurring, on or after the change-over date, any reference in any existing document to the Gibraltar Bank shall be construed as or, as the case may require, as including a reference to the parent Bank.

(2) As respects anything done or falling to be done on or after the change-over date, any reference in any existing document to the directors or to any description of director, officer or employee of the Gibraltar Bank shall be construed as a reference to the directors of the parent Bank or, as the case may be, to such description of director, officer or employee of the parent Bank as it may nominate in writing for the purpose of the document or, in default of such a nomination, to that description of director, officer or employee of the parent Bank which corresponds as nearly as may be to the description specified in the document.

(3) On and after the change-over date, all documents which, before that date, would have been evidence in respect of any matter for or against the Gibraltar Bank shall be admissible in evidence in respect of the same matter for or against the parent Bank.

Supplementary provisions as to specific matters.

7.(1) The provisions of this section have effect without prejudice to the generality of the preceding provisions of this Act.

(2) Any existing account between the Gibraltar Bank and any person shall, on the change-over date, become an account between the parent Bank and that person but shall in other respects continue subject to the same terms and conditions as applied immediately before that date (including any terms and conditions providing for variation or termination).

(3) Whether or not it is contained in a document, any existing instruction, order, direction, mandate, authority, consent, understanding, undertaking or other thing to which the Gibraltar Bank is a party or which otherwise affects the Gibraltar Bank shall have effect on and after the

change-over date as if the parent Bank were a party to it or, as the case may be, shall similarly affect the parent Bank on and after that date.

(4) If, under any existing document, the Gibraltar Bank is or would be entitled in respect of any matter—

- (a) to charge remuneration in accordance with a scale for the time being applicable to the Gibraltar Bank; or
- (b) otherwise to act in accordance with any terms or conditions for the time being so applicable,

then, on and after the change-over date, the document shall be construed as entitling the parent Bank to charge in accordance with the corresponding scale or, as the case may be, to act in accordance with the corresponding terms or conditions for the time being applicable to the parent Bank.

(5) On and after the change-over date, any claims or legal proceedings which are existing or pending immediately before that date by or against the Gibraltar Bank shall be treated for all purposes as if the parent Bank and the Gibraltar Bank were the same person in law, except that, by virtue of this Act, the name of the parent Bank shall be substituted in those proceedings for that of the Gibraltar Bank.

(6) In any case where—

- (a) an existing obligation of the Gibraltar Bank becomes, by virtue of this Act, an obligation of the parent Bank, and
- (b) before the change-over date, the performance of that obligation is in any way or to any extent guaranteed by the parent Bank,

that guarantee shall cease to have effect on that date.

(7) So far as relates to its carrying on in or from within Gibraltar (through a branch or branches) of the business formerly carried on by the Gibraltar Bank, the parent Bank shall be treated for the purposes of the assessment of and charge to tax as the continuation (without any change of legal entity) of the Gibraltar Bank and, accordingly (and, in particular),—

- (a) the vesting of the Gibraltar Bank's undertaking in the parent Bank shall not be regarded as constituting (or giving rise to) the cessation or commencement of a business or source of income; and
- (b) activities of any description carried on by the parent Bank (through a branch or branches) on and after the change-over date shall continue to be assessed and taxed

in like manner as activities of that description were assessed and taxed when carried on by the Gibraltar Bank before that date.

Application of Bankers' Books Evidence Act 1879.

8.(1) On and after the change-over date, the Bankers' Books Evidence Act 1879 (in this section referred to as "the 1879 Act") shall apply to the bankers' books of the Gibraltar Bank which, by virtue of this Act, become the property of the parent Bank as if those books were the bankers' books of the parent Bank.

(2) For the purposes of the application on or after the change-over date of section 4 of the 1879 Act to a copy of an entry purporting to be made before that date in a book to which subsection (1) applies, -

- (a) at the time of the making of the entry the book shall be deemed to have been an ordinary book of the parent Bank; and
- (b) the entry shall be deemed to have been made in the usual and ordinary course of business.

(3) Section 9(2) of the 1879 Act (construction of expressions relating to "bankers' books") shall apply in relation to this section as it applies in relation to that Act.

Evidence as to transfer of property.

9. Any document coming into existence on or after the change-over date whereby the parent Bank, whether alone or jointly with any other person, —

- (a) conveys or transfers or purports to convey or transfer, or
- (b) applies to be registered as the holder or proprietor of,

any property which, immediately before the change-over date, was held by the Gibraltar Bank, whether alone or jointly with any other person, shall be prima facie evidence that the interest of the Gibraltar Bank in that property became vested in the parent Bank by virtue of this Act.

Winding-up of the Gibraltar Bank.

10.(1) On such date (in this section referred to as "the winding-up date") as may be specified by the Minister for Trade and Industry by notice in the Gazette, the Gibraltar Bank shall be wound up by virtue of this Act (and without any application or other proceeding or action).

(2) The date specified as the winding-up date shall not be earlier than the date on which the Gibraltar Bank ceases to hold any licence under the Financial Services Act 1989 or the Financial Services (Banking) Act 1992 and, accordingly, no date may be specified under

subsection (1) without the consent in writing of the Commissioner appointed under the Financial Services Commission Act 1989.

(3) For the purposes of enabling the Registrar of Companies to take such action as he considers appropriate in consequence of the winding-up of the Gibraltar Bank, not later than seven days after the winding-up date the parent Bank shall serve on the Registrar a copy of the notice in the Gazette specifying that date.

Expenditure attributable to enactment of Act.

11. The expenditure incurred by the Government in connection with the introduction and enactment of this Act, as certified by the Minister for Trade and Industry, shall be paid by the Gibraltar Bank.