ELIZABETH II



1972 CHAPTER vi

An Act to provide for the transfer to Lloyds & Bolsa International Bank Limited of part of the undertaking of Bank of London & South America Limited and the undertaking of Lloyds Bank Europe Limited; and for other purposes incidental thereto and consequential thereon.

[11th May 1972]

WHEREAS Bank of London & South America Limited (hereinafter referred to as "Bolsa") is a company incorporated under the Joint Stock Banking Companies Acts 1857 and 1858 as a company limited by shares and carries on in the United Kingdom and elsewhere the business of banking, including the business of acting as executor and trustee:

And whereas part of the business of Bolsa is carried on in Argentina, Brazil, Paraguay, Peru, Portugal, Spain and Uruguay (hereinafter referred to as "the specified territories"):

And whereas Lloyds Bank Europe Limited (hereinafter referred to as " LBE ") is a company incorporated under the Companies
1908 c. 69. (Consolidation) Act 1908 as a company limited by shares and also carries on in the United Kingdom and elsewhere the business of banking, including the business of acting as executor and trustee:

And whereas Lloyds & Bolsa International Bank Limited (hereinafter referred to as " the Bank ") is a company incorporated under the Companies Acts 1948 to 1967 as a company limited by shares and was formed with the object (amongst others) of carrying on the business of banking in the United Kingdom and elsewhere:

And whereas LBI Trust Company (hereinafter referred to as " the trust company ") is a company incorporated under the
1948 c. 38 Companies Act 1948 as an unlimited company and carries on in the United Kingdom the business of acting as executor and trustee:

And whereas the whole of the share capital of the trust company is owned by the Bank and Bolsa:

And whereas following the making of a scheme of arrangement which was sanctioned under section 206 of the Companies Act 1948 and which became effective on 10th May, 1971, Bolsa and LBE became wholly-owned subsidiaries of the Bank:

And whereas the said scheme of arrangement was proposed with a view to the fusion of the part of the undertaking of Bolsa situated outside the specified territories and the undertaking of LBE:

And whereas for the better conduct of the businesses of Bolsa and LBE it is expedient that the said fusion should occur and that it should occur by means of the transfer to the Bank of the part of the undertaking of Bolsa situated outside the specified territories and the undertaking of LBE:

And whereas for the better conduct of that part of the Bank's undertaking which after the aforesaid transfer consists of the business of acting as executor and trustee it is expedient that that part should be transferred to the trust company:

And whereas it is expedient that the said transfers should be effected economically and without interference with the conduct and continuity of the various businesses referred to herein:

And whereas it is expedient that the said transfers should be effected as provided in this Act and that the other provisions contained in this Act relative thereto and consequential thereon should be enacted:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Lloyds & Bolsa International Bank Act 1972.

Division of Act into Parts.

2. This Act is divided into Parts as follows:—

Part I.—Preliminary.

Part II.—Transfer of undertakings of existing banks.

Part III.—Executor and trustee business.

Part IV.—General.

Interpretation.

3.—(1) In this Act, unless the subject or context otherwise requires—

"the appointed day" means 29th July, 1972, or such other date as may be appointed by order of the Secretary of State for Trade and Industry made on the application of the Bank;

"the Bank" means Lloyds & Bolsa International Bank Limited;

"Bolsa" means Bank of London & South America Limited;

"customer" includes any person having a banking account or other dealing, transaction or arrangement in the course of business with an existing bank or (as the context may require) the trust company or the Bank;

"enactment" means an enactment in this Act or in any general or local Act or in any order, rule or regulation made under any Act;

PART I —*cont.*

" excluded assets " means the assets mentioned in Part I of the Schedule to this Act and " excluded asset " shall be construed accordingly;

" excluded liabilities " means the liabilities mentioned in Part II of the Schedule to this Act and " excluded liability " shall be construed accordingly;

" the existing banks " means Bolsa and LBE and " existing bank " shall be construed accordingly;

"LBE " means Lloyds Bank Europe Limited;

" liabilities " includes duties and obligations of every description whether actual or contingent, present or future, but does not include any duty or obligation of an existing bank relating to an excluded asset or an excluded liability;

" property " means property and assets of every description wheresoever situate of an existing bank, and includes securities, rights, benefits and powers of every description, except any security, right, benefit or power of an existing bank relating to an excluded asset;

" security " means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, hypothecation, undertaking, indemnity, guarantee, lien, pledge (whether actual or constructive) or other document or arrangement for securing the payment of a debt, whether present or future, or the discharge of an obligation or liability, whether present or future, actual or contingent;

" the specified territories " means Argentina, Brazil, Paraguay, Peru, Portugal, Spain and Uruguay;

" subsidiary " has the same meaning as in section 154 of the Companies Act 1948;

1948 c. 38.

" the trust company " means LBI Trust Company;

" the undertaking of an existing bank " means the business and all of the property, except any excluded asset, vested in or belonging to or held by that existing bank immediately before the appointed day and all of the liabilities, except any excluded liability, to which that existing bank shall be subject immediately before that day;

" will " includes a codicil and any other testamentary writing.

PART I —*cont.*

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

(3) Any order made under this section shall be made by statutory instrument.

PART II

TRANSFER OF UNDERTAKINGS OF EXISTING BANKS

Transfer of undertakings of existing banks.

4.—(1) Subject to the provisions of subsection (2) of this section, on the appointed day the undertakings of the existing banks shall by virtue of this Act be transferred to and vest in the Bank.

(2) (*a*) Where any portion of the undertaking of an existing bank consists of property recorded or due to be recorded in the books of or otherwise belonging to any branch of an existing bank situated outside the United Kingdom or of liabilities so recorded or due to be recorded, subsection (1) of this section shall not operate to transfer any part of such portion to the Bank until the directors of the existing bank and the directors of the Bank by resolution determine that that portion or part thereof shall be so transferred and the date of such transfer, and the date so determined shall in respect of that portion or part thereof be deemed to be the appointed day for the purposes of this Act.

(*b*) Where the transfer or vesting of any property or rights forming part of the undertaking of an existing bank is governed otherwise than by the law of a part of the United Kingdom then, as from the appointed day, the existing bank shall, if the Bank so require, take all necessary steps for the purpose of securing that the whole or such part of the portion as the Bank may require is effectively transferred to the Bank.

Saving of contracts, etc.

5.—(1) Subject to the provisions of this Act, all contracts, agreements, conveyances, deeds, leases, licences, guarantees, bonds, indemnities, instructions and other instruments or undertakings entered into by or made with or addressed to an existing bank (whether alone or with any other person and whether as principal or agent) before and in force on the appointed day shall on and after that day to the extent that they were previously binding upon and enforceable against the existing bank, be binding and of full force and effect in every respect against or in favour of the Bank as fully and effectually as if, instead of an existing bank, the Bank had been a party thereto or bound thereby or entitled to the benefit thereof;

PART II —*cont.*

Provided that—

(*a*) the provisions of this section shall not apply to any contract of employment of a person engaged in work wholly or mainly in any of the specified territories or to any contract, agreement, conveyance, deed, lease, licence, guarantee, bond, indemnity, instruction, instrument or undertaking relating to an excluded asset or an excluded liability;

(*b*) no director, secretary or auditor of an existing bank shall by virtue only of this Act become a director, secretary or auditor (as the case may be) of the Bank.

(2) In relation to every contract of employment to which subsection (1) of this section applies, the provisions of the said subsection shall operate to substitute the Bank for the existing bank which was the employer thereunder immediately before the appointed day but not to constitute a termination of such contract for the purposes of the Redundancy Payments Act 1965.

1965 c. 62.

Application of enactments and documents.

6.—(1) Subject to the provisions of this Act, where—

(*a*) any enactment other than an enactment in this Act; or

(*b*) any document whensoever made or executed;

contains any reference express or implied to an existing bank such reference shall, on and after the appointed day and except where the context otherwise requires, be read, construed and have effect as a reference to the Bank:

Provided that this subsection shall not apply to any reference in any enactment or document to an existing bank in relation to an excluded asset or an excluded liability.

(2) (*a*) Without prejudice to the generality of the immediately preceding subsection, where by any order of the court or by any trust deed, settlement, covenant, agreement, will or appointment, whether made or executed before, on or after the appointed day, an existing bank was or is (whether alone or with any other person) granted letters of administration or appointed trustee, executor, guardian or in any other fiduciary capacity, such order, trust deed, settlement, covenant, agreement, will or appointment shall not fail by reason of anything in this Act but shall on and after the appointed day be read, construed and have effect as if for any reference therein to that existing bank there was substituted a reference to the Bank.

(*b*) Where any order, trust deed, settlement, covenant, agreement, will or appointment such as is mentioned in the preceding paragraph which authorised or authorises an existing bank or (in the case of any such order or other instrument taking effect after the appointed day) would have authorised an existing bank (if such existing bank had accepted such appointment) to charge remuneration or otherwise to act in accordance with some specified scale or some specified terms or conditions applicable to

PART II —*cont.*

such existing bank at any particular date before, on or after the appointed day or for the time being, then on and after the appointed day every reference in such order or other instrument to such scale or terms or conditions shall be construed and have effect as if the same were a reference to the corresponding scale or terms or conditions applicable to the Bank at such particular date or for the time being (as the case may be):

Provided that where any such reference is to some specified scale or some specified terms or conditions applicable to an existing bank at some date before the appointed day, then the foregoing provisions of this paragraph shall be construed and have effect as if such scale or terms or conditions had been applicable to the Bank at such prior date (notwithstanding that the Bank may not have been in existence at that date) and as if every reference in such scale or terms or conditions to the existing bank had been a reference to the Bank.

Supplementary provisions as to businesses.

7.—(1) Without prejudice to the generality of the foregoing provisions of this Act, but subject to subsection (2) of this section, the following provisions shall have effect with relation to the undertakings of the existing banks:—

(*a*) Any account between an existing bank and a customer at any office or branch of that existing bank shall be transferred to the Bank on the appointed day and shall become on and after that day an account between the 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 existing bank and the customer had continued and such account shall be deemed for all purposes to be a single continuing account and so that any instruction, order, direction, mandate, power of attorney, authority or undertaking given by such customer in relation to such account and subsisting at or given after the appointed day shall, unless and until revoked or cancelled, apply and have effect in relation to such account after its transfer to the Bank as aforesaid:

(*b*) Any security in favour of an existing bank, an agent for an existing bank or a nominee of an existing bank for the payment of debts or liabilities (whether present or future, actual or contingent) of any person shall be transferred or deemed to be transferred to the Bank on the appointed day and shall be held by and be available to the Bank as security for the payment of such debts and liabilities to the Bank; and where the security extends to future advances or to future liabilities of such persons, the said security shall on and after that day be held by and be available to the Bank as

PART II —*cont.*

security for future advances to the said person by, and future liabilities of the said person to, the Bank to the same extent to which future advances by, or liabilities to, the existing bank were secured thereby immediately before that day:

(*c*) The Bank shall, in relation to any security transferred or deemed to have been transferred to it in accordance with or by virtue of the provisions of this Act and the moneys thereby secured in accordance with those provisions, be entitled to the same rights and priorities and subject to the same obligations and incidents as the existing bank from which the same has been transferred or deemed to have been transferred would have been entitled and subject to if the same had continued to be held by the said existing bank:

(*d*) The custody of any document, goods or other property held by an existing bank as bailee for any other person at any office or branch of such existing bank shall be transferred or deemed to be transferred to the Bank on the appointed day and the rights and obligations of such existing bank under any contract of bailment relating to such document, goods or property shall be transferred or deemed to be transferred on that day to the Bank:

(*e*) 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, an existing bank, or payable at any place of business of an existing bank shall have the same effect on and after the appointed day as if it had been drawn on, or given to, or accepted or endorsed by the Bank, or payable at the same place of business of the Bank.

(2) The provisions of subsection (1) of this section shall not apply in relation to so much of the undertaking of an existing bank as is within any of the specified territories.

Actions, etc., not to abate.

8.—(1) Subject to the provisions of this Act, any action, application, arbitration or proceeding and any cause of action, application, arbitration or proceeding which shall on the appointed day be pending or existing by, against or in favour of an existing bank shall not abate or be discontinued or be in any way prejudicially affected by reason of the provisions of this Act, but the same may only be prosecuted, continued and enforced by, against or in favour of the Bank as and when it might have been prosecuted, continued and enforced by, against or in favour of an existing bank if this Act had not been passed.

PART II —*cont.*

(2) Subject to the provisions of this Act any judgment or award obtained by or against an existing bank and not fully satisfied before the appointed day shall only be enforceable by or against the Bank:

Provided that in the case of any action, arbitration or proceeding or any cause of action, arbitration or proceeding pending or existing on the appointed day in favour of an existing bank or existing after the appointed day in favour of the Bank the judgment or award wherein is or could be enforceable outside the United Kingdom, an existing bank may, at the request of the Bank, continue or, as the case may be, commence such action, arbitration or proceeding in its own name on behalf of the Bank and may enforce any such judgment or award in the same manner and to the same extent as if this Act had not been passed.

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

(4) This section shall not apply to any action, application, arbitration or proceeding or to any cause of action, application, arbitration or proceeding relating to an excluded asset or to an excluded liability.

Evidence and books and documents.

9.—(1) Subject to the provisions of this Act, on and after the appointed day all books and other documents which would before the appointed day have been evidence in respect of any matter for or against an existing bank shall be admissible in evidence in respect of the same matter for or against the Bank.

(2) In this section " documents " has the same meaning as in section 10 of the Civil Evidence Act 1968. 1968 c. 64.

Application of Bankers' Books Evidence Act 1879. 1879 c. 11.

10.—(1) Notwithstanding the transfer of the undertakings of the existing banks to the Bank under and in the terms of this Act, the provisions of the Bankers' Books Evidence Act 1879 shall continue to apply with respect to the books of the existing banks which are transferred to the Bank by virtue of this Act and to entries made in such books before the appointed day.

(2) For the purposes of this section, " books " include ledgers, day books, cash books, account books and all other books and records (including computer tape) used in the ordinary business of an existing bank before the appointed day.

PART III

EXECUTOR AND TRUSTEE BUSINESS

Interpretation of Part III.

11.—(1) In this Part of this Act " in the capacity of a trustee " does not include as a trustee under a trust letter or as a nominee, but subject thereto means (whether alone or with any other person)—

(*a*) as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will whether originally so appointed or not, and whether appointed under hand or seal, or by order of any court or otherwise howsoever;

(*b*) as executor of the will of a deceased person;

(*c*) as administrator or attorney 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.

(2) In this section—

" trust letter " means—

(*a*) a letter or an agreement whereby a bank is constituted trustee of moneys to be repaid to that bank in respect of advances made or of moneys made available or to be made or made available to a customer (whether alone or with any other person) by that bank on behalf of itself or on behalf of itself and any other person or of any document intended to secure moneys to be so repaid; or

(*b*) a letter, authority or instruction whereby a bank is constituted trustee by a customer to hold, complete, release or otherwise deal with any negotiable instrument drawn or made by that customer pursuant to or in connection with any agreement by which that bank (whether alone or with any other person) has advanced or has agreed (whether conditionally or not) to advance moneys to that customer (whether alone or with any other person) or to make moneys available to assist the financing of contracts to which that customer is a party.

Further transfer of executor and trustee business of existing banks.

12.—(1) On the day next following the appointed day the property vested in the Bank in the capacity of a trustee by virtue of section 4 (Transfer of undertakings of existing banks) of this Act shall by virtue of this Act be transferred to and vest in the trust company in the same capacity.

(2) Where any provision of Part II of this Act has the effect that— PART III —*cont.*

(*a*) any contract, agreement, conveyance, deed, lease, licence, guarantee, bond, indemnity, instruction, instrument or undertaking entered into by or made with or addressed to an existing bank in the capacity of a trustee is binding against or in favour of the Bank;

(*b*) any enactment or document containing a reference to an existing bank in the capacity of a trustee is to be read, construed and have effect as containing a reference to the Bank;

(*c*) any order, trust deed, settlement, covenant, agreement, will or appointment is to be read, construed and have effect as if for the reference therein to an existing bank in the capacity of a trustee there is substituted a reference to the Bank;

(*d*) any action, application, arbitration or proceeding and any cause of action, application, arbitration or proceeding which is pending or existing by, against or in favour of an existing bank in the capacity of a trustee may be prosecuted, continued and enforced by, against or in favour of the Bank;

(*e*) any judgment or award obtained by or against an existing bank in the capacity of a trustee is enforceable by or against the Bank; or

(*f*) any book or other document which would have been evidence in respect of any matter for or against an existing bank in the capacity of a trustee is admissible for or against the Bank;

then on and after the day next following the appointed day, such provision shall be deemed to have the further effect of substituting the trust company for the Bank so that the trust company from that first-mentioned day has the same rights, powers and liabilities as the Bank would have had by reason of any such effect as aforesaid had this section not been enacted.

PART IV

GENERAL

Evidence of transfer.

13. The production of a Queen's Printer's copy of this Act shall be conclusive evidence in all courts and proceedings of the transfer and vesting in accordance with this Act of any undertaking or property which is transferred and vested by virtue of this Act; and without prejudice to the generality of the foregoing—

(*a*) any such copy of this Act shall, in relation to any registered securities within the meaning of the Stock

PART IV —*cont.*

Transfer Act 1963 which are transferred and vested by virtue of this Act, operate for all the purposes of the said Act of 1963 as a duly executed stock transfer in respect of the transfer and vesting of such securities; and

1963 c. 18.

(*b*) any request, instruction or stock transfer made, issued or executed on or after the day next following the appointed day whereby the trust company (whether alone or with any other person) seeks to convey or transfer to any person (whether for consideration or not), or applies to be registered as the holder of, any property which was vested in the Bank (whether alone or with any other person) immediately before the day next following the appointed day, shall be conclusive evidence that the interest of the Bank in such property became vested in the trust company on the day next following the appointed day by virtue of this Act.

Transfers of interests in land.

14. For the avoidance of doubt it is hereby declared that the transfer of an interest in land under and by virtue of this Act shall not—

(*a*) constitute a purchase or creation of that interest for the purposes of section 30 (2) of the Landlord and Tenant Act 1954; or

1954 c. 56.

(*b*) constitute an assignment, transfer, devolution, parting with possession or other disposition of that interest for the purposes of any provision relating to assignment, transfer, devolution, parting with possession or other disposition contained in any instrument concerning that interest; or

(*c*) invalidate or discharge any contract or security; or

(*d*) operate so as to merge any leasehold interest in the reversion which is expectant thereon.

No exemption from enactments concerning banking companies.

15. Nothing in this Act shall exempt any company from the provisions of any enactment relating to companies carrying on the business of banking.

Application to Northern Ireland.

16.—(1) It is hereby declared that this Act extends to Northern Ireland.

(2) In the application of this Act to Northern Ireland—

(*a*) the provisions thereof shall be treated for the purposes of section 6 of the Government of Ireland Act 1920 as passed before the appointed day within the meaning of that section; and

1920 c. 67.

(*b*) (i) the expression "Act" shall include an Act of the Parliament of Northern Ireland; PART IV —*cont.*

(ii) in section 14 for the reference to section 30 (2) of the Landlord and Tenant Act 1954 there shall be substituted a reference to section 10 (3) of the Business Tenancies Act (Northern Ireland) 1964; 1954 c. 56. 1964 c. 36 (N.I.).

(iii) in section 5 (2) for the reference to the Redundancy Payments Act 1965 there shall be substituted a reference to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965; and 1965 c. 62. 1965 c. 19 (N.I.).

(iv) in section 13 for the reference to the Stock Transfer Act 1963 there shall be substituted a reference to the Stock Transfer Act (Northern Ireland) 1963. 1963 c. 18. 1963 c. 24 (N.I.).

17. This Act shall extend to Scotland and in the application thereof to Scotland the following provisions shall have effect:— Application to Scotland.

(*a*) In the construction of this Act—

for the reference in section 9 (2) to section 10 of the Civil Evidence Act 1968 there shall be substituted a reference to section 17 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968; 1968 c. 64. 1968 c. 70.

the expression "judicial trustee" includes a judicial factor;

the expression "mortgage" includes a floating charge or any instrument containing a floating charge, a standard security, an assignation or disposition ex facie absolute and any agreement qualifying the same, a bond and disposition or assignation in security, a cash credit bond and disposition or assignation in security, an assignation in security and any real right or burden of whatever kind in the nature of a security; and

the expression "will" includes a trust disposition and settlement:

(*b*) All standard securities, cash credit bonds and dispositions or assignations in security expressed to be in favour of an existing bank transferred to and vested in—

(i) the Bank on the appointed day by virtue of this Act shall, on and after that day, have the same effect in favour of the Bank up to the maximum amounts stated therein respectively in all respects as if they had been originally granted in favour of the Bank for such maximum amount;

(ii) the trust company on the day next following the appointed day by virtue of this Act shall, on and after

PART IV —*cont.*

that first-mentioned day, have the same effect in favour of the trust company up to the maximum amounts stated therein respectively in all respects as if they had been originally granted in favour of the trust company for such maximum amount:

(*c*) To enable a company (in this paragraph called a "transferee company") to which by virtue of this Act there is transferred any property heritably vested in another company redeemably or irredeemably to complete a title if thought fit to such property by notice of title or otherwise or to deduce title, this Act shall be deemed to be and may be used as, a general disposition, conveyance or assignation as the case may be of such property in favour of the transferee company.

Costs of Act.

18. All costs, charges and expenses preliminary to and of and incidental to the preparing, applying for, obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Bank.

SCHEDULE

Section 3.

PART I

EXCLUDED ASSETS

1. Any document required to be kept by an existing bank pursuant to the provisions of the Companies Acts 1948 to 1967.

2. Any holding of the following stocks, shares and securities forming part of the portfolio of the Head Office of Bolsa immediately before the appointed day:—

Roade Investments Limited;

Brazilian Government Provisional Receipts re Brazilian Income Tax Law 1474.

3. Any holding of the following stocks, shares and securities forming part of the portfolio of the Head Office of LBE immediately before the appointed day:—

Lloyds Bank (Cannes) S.A.;

Société Immobilière Continentale S.A.;

Société Immobilière de la Madone S.A.M.

4. Any property recorded or due to be recorded in the books of or otherwise belonging to any branch of Bolsa situated in any of the specified territories.

5. Balances due to the existing banks from the Bank on accounts designated " Assets Transferred ".

6. Any asset recorded in the books of Bolsa in the United Kingdom which corresponds directly with a liability recorded in the books of any branch of Bolsa situated in any of the specified territories in connection with the investment of capital therein, the remittance of profits or the making good of losses.

7. One share of the trust company.

PART II

EXCLUDED LIABILITIES

1. All liabilities recorded or due to be recorded in the books of any branch of Bolsa situated in any of the specified territories.

2. Balances owing by the existing banks to the Bank on accounts designated " Liabilities Transferred ".

3. The liability of Bolsa as guarantor under two deeds of guarantee relating to the Bolsa Group Pension Scheme made between Bolsa of the first part and Sir George Lewis French Bolton, K.C.M.G., Hugh Norman Saunders, O.B.E., T.D., J.P. and Patrick Graham Hedley Hedley-Dent, F.C.I.S. of the second part and dated 24th April, 1968, and 30th June, 1970, respectively.

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Lloyds & Bolsa International Bank Act 1972

CHAPTER vi

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