



# National Australia Group Europe Act 2001

## 2001 CHAPTER v

An Act to provide for the fusion of the undertakings of Clydesdale Bank PLC and Yorkshire Bank PLC by the transfer to Clydesdale Bank PLC of the undertaking of Yorkshire Bank PLC; and for connected purposes. [4th December 2001]

Whereas—

National Australia Group Europe Limited (hereinafter called “NAG Europe”) is a private limited company incorporated in England under the Companies Act 1985 (c. 6) whose subsidiary companies carry on in the United Kingdom and elsewhere the businesses of banking and financial services and other related activities:

And whereas Clydesdale Bank PLC (hereinafter called “Clydesdale Bank”) is a public limited company incorporated in Scotland under the Companies Acts 1862 to 1880 and carries on in the United Kingdom and elsewhere the businesses of banking and financial services and other related activities:

And whereas Yorkshire Bank PLC (hereinafter called “Yorkshire Bank”) is a company incorporated in England under the Companies (Consolidation) Act 1908 (c. 69) and carries on in the United Kingdom and elsewhere the businesses of banking and financial services and other related activities:

And whereas Clydesdale Bank and Yorkshire Bank are both wholly-owned subsidiaries of NAG Europe:

And whereas for the better conduct of the business of NAG Europe and its subsidiaries it is expedient that provision be made for the fusion of the undertakings of Clydesdale Bank and Yorkshire Bank by the transfer to Clydesdale Bank of the undertaking of Yorkshire Bank and that the fusion should be effected economically and without interference with the conduct and continuity of the businesses carried on by NAG Europe or its subsidiaries:

And whereas it is expedient that the other provisions in this Act should be enacted:

And whereas the objects of this Act cannot be attained 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,

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and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## 1 Short title

This Act may be cited as the National Australia Group Europe Act 2001.

## 2 Interpretation

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

“account” includes any contract or facility between a person and Yorkshire Bank by virtue of which money or any unit of account is, or may be, deposited or borrowed by any person;

“appointed day” means such day as may, under section 3 (Appointed day) of this Act be appointed for the purposes of this Act;

“Clydesdale Bank” means Clydesdale Bank PLC;

“contract” includes any agreement, transaction, arrangement or understanding, whether or not conditional or in writing and whether or not governed by English law;

“convey” has the same meaning as in the Law of Property Act 1925 (c. 20);

“customer” includes any person having an account or other dealing or a contract with Yorkshire Bank;

“document” means any thing in which information of any description is recorded;

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

“existing” means existing, outstanding or in force immediately before the appointed day;

“financial year” means a financial year determined in accordance with the provisions of section 223 of the Companies Act 1985 (c. 6) and “last financial year” means the last completed financial year of Clydesdale Bank or of Yorkshire Bank, as the case may be, before the appointed day;

“holding company” has the meaning given by sections 736 and 736A of the Companies Act 1985;

“liability” includes a duty and an obligation of any description (whether present or future, actual, contingent or prospective);

“NAG Europe” means National Australia Group Europe Limited;

“property” means property and assets of every description and includes property and assets held on trust or in a fiduciary capacity and security interests, rights, benefits and powers of every description;

“seal” includes a common seal and also any official seal which may be kept pursuant to section 39 or 40 of the Companies Act 1985;

“security interest” includes a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment by way of security, indemnity, right of set-off, counterclaim, flawed asset arrangement,

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commitment or other means of securing payment or discharge of a debt or liability;

“subsidiary” has the meaning given by sections 736 and 736A of the Companies Act 1985 (c. 6);

“trustee” includes—

- (a) a trustee or custodian trustee of any trust, settlement, covenant, contract or will (whether originally so appointed or not, and whether appointed under hand or by deed or by order of any court);
- (b) an executor of the will, or administrator of the estate, of a deceased person;
- (c) a judicial trustee appointed by order of any court;
- (d) an attorney for another person; and
- (e) any person acting in a fiduciary capacity;

“undertaking” means the business and all property and liabilities of Yorkshire Bank of whatever nature, but does not include any seal, or any documents relating to the constitution of Yorkshire Bank or those documents comprising registers, indices, or minute books usually required to be kept by Yorkshire Bank at its registered office pursuant to the provisions of the Companies Act 1985;

“will” includes a codicil and any other testamentary writing; and

“Yorkshire Bank” means Yorkshire Bank PLC.

- (2) Any reference in this Act to property or liabilities of Yorkshire Bank is a reference to property or liabilities—
  - (a) wherever they are situated or arise;
  - (b) whether or not they are capable of being transferred or assigned by Yorkshire Bank; and
  - (c) whether Yorkshire Bank is entitled or subject to them under the law of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.

### **3 Appointed day**

- (1) The directors of Clydesdale Bank and of Yorkshire Bank may jointly appoint a day to be the appointed day for the purposes of this Act.
- (2) Before the day so appointed, Clydesdale Bank and Yorkshire Bank shall publish a notice in the London Gazette, the Edinburgh Gazette and the Belfast Gazette of the day so appointed, stating that it is the appointed day for the purposes of this Act.
- (3) The publication of a notice under subsection (2) above shall be conclusive evidence of the appointed day for the purposes of this Act, and a photocopy or other reproduction, certified by an authorised officer of Clydesdale Bank, of a page or part of a page of the London Gazette, the Edinburgh Gazette or the Belfast Gazette containing the notice shall be conclusive evidence of publication of the notice.

### **4 Transfer to Clydesdale Bank**

- (1) On the appointed day the undertaking shall, by virtue of this Act and without further assurance, be transferred to Clydesdale Bank to the intent that Clydesdale Bank shall

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succeed to the undertaking as if in all respects Clydesdale Bank were the same person in law as Yorkshire Bank.

- (2) Where the transfer or vesting of any property or liability comprised in the undertaking is governed by the law of any country or territory outside the United Kingdom, Yorkshire Bank shall, if Clydesdale Bank so requires, take all necessary steps for securing that the transfer to Clydesdale Bank of the property or liability is fully effective under the law of that country or territory.

## **5 Provisions as to trust property and wills**

- (1) Any property transferred to Clydesdale Bank by virtue of this Act which immediately before the appointed day was held by Yorkshire Bank whether alone or jointly with any other person, as trustee, shall, on and from the appointed day, be held by Clydesdale Bank alone or, as the case may be, jointly with such other person in the same capacity upon the same trusts, and with and subject to the same powers, provisions and liabilities, as were applicable thereto prior to such transfer.

- (2) The following—

- (a) any existing instrument or order of any court under or by virtue of which any property became or may become vested in Yorkshire Bank as trustee, and
- (b) any provision therein, or any existing contract for the payment to, or retention by, Yorkshire Bank of remuneration for its services in any such capacity,

shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to Yorkshire Bank, other than a reference (however worded and whether express or implied) to terms and conditions of, or to a rate, charge, tariff or scale of fees of, Yorkshire Bank, there were substituted a reference to Clydesdale Bank:

Provided that any right which was exercisable by Yorkshire Bank to alter the terms and conditions or the rate, charge, tariff or scale of fees of Yorkshire Bank shall after the appointed day be exercisable by Clydesdale Bank.

- (3) The following—

- (a) any will made before the appointed day which has not been proved in any part of the United Kingdom before the appointed day, and
- (b) any will made on or after the appointed day, being a will which appoints Yorkshire Bank to be a trustee or recipient of any property as trustee,

shall be construed and have effect as if for any reference therein to Yorkshire Bank as such trustee or recipient or otherwise in connection with such appointment, not being a reference (however worded and whether express or implied) to terms and conditions of, or to a rate, charge, tariff or scale of fees of, Yorkshire Bank, there were substituted a reference to Clydesdale Bank:

Provided that any right which was exercisable by Yorkshire Bank to alter the terms and conditions or the rate, charge, tariff or scale of fees of Yorkshire Bank shall after the appointed day be exercisable by Clydesdale Bank.

- (4) No testamentary gift shall be adeemed by reason only of the operation of any of the provisions of this Act.

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## 6 Supplementary provisions as to transfer

- (1) Without prejudice to the generality of the foregoing provisions of this Act but subject to any provision of this Act to the contrary, the following provisions shall have effect in relation to the undertaking.
- (2) Every existing contract to which Yorkshire Bank is a party shall be construed and have effect on and from the appointed day—
  - (a) as if Clydesdale Bank were a party thereto instead of Yorkshire Bank;
  - (b) subject to subsection (5) below, as if for any reference (however worded and whether express or implied) to Yorkshire Bank there were substituted a reference to Clydesdale Bank;
  - (c) as if any reference (however worded and whether express or implied) to the directors, officers, representatives or employees or to any director, officer, representative or employee of Yorkshire Bank were a reference (as the case may require)—
    - (i) to the directors, officers, representatives or employees of Clydesdale Bank, or
    - (ii) to such director, officer, representative or employee of Clydesdale Bank as Clydesdale Bank may nominate for that purpose, or
    - (iii) in default of nomination, to the director, officer, representative or employee of Clydesdale Bank who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee; and
  - (d) where the contract relates to property or liabilities which are for the time being only partly transferred to Clydesdale Bank by virtue of this Act, as if the contract, to the extent to which it is enforceable by and against Yorkshire Bank, constituted two separate contracts—
    - (i) one of which is enforceable by and against Clydesdale Bank only as regards the part of the property or, as the case may be, liabilities so transferred to Clydesdale Bank, and
    - (ii) the other of which is enforceable by and against Yorkshire Bank only as regards the part of the property or, as the case may be, liabilities not so transferred to Clydesdale Bank.
- (3) Paragraphs (b) and (c) of subsection (2) above shall, on and from the appointed day, apply to any enactment other than the provisions of this Act and to any provision of any existing contract to which Yorkshire Bank was not a party on the appointed day.
- (4) Paragraphs (a), (b) and (c) of subsection (2) above shall, on and from the appointed day, apply to any provision of any other existing document (not being a contract or a will) as they apply to a contract to which that subsection applies.
- (5) Paragraph (b) of subsection (2) above shall not apply to the name or title of any rate, charge, tariff, scale of fees, terms or conditions of Yorkshire Bank which includes the initials, the name or part of the name of Yorkshire Bank, but on or after the appointed day Clydesdale Bank may change the name or title.
- (6) An offer or invitation to treat made to or by Yorkshire Bank before the appointed day shall be construed and have effect on and after the appointed day as an offer or invitation to treat (as the case may be) made to or by Clydesdale Bank.
- (7) Any account between Yorkshire Bank and a customer shall, on and from the appointed day, become an account between Clydesdale Bank and the customer subject to the