



# HBOS Group Reorganisation Act 2006

## 2006 CHAPTER i

### PART 3

#### TRANSFER OF UNDERTAKINGS

#### **9 Appointed day**

- (1) The board of the Bank may appoint a day to be the appointed day for an undertaking for the purposes of this Part and may appoint different days as the appointed day for different parts of an undertaking.
- (2) No day may be appointed under subsection (1) above that falls before the registration date.
- (3) Before an appointed day, the Bank shall publish a notice in the London Gazette, the Edinburgh Gazette and the Belfast Gazette of the day, stating that it is an appointed day for the purposes of this Act and the appointed undertaking.
- (4) The publication of a notice under subsection (3) above shall be conclusive evidence of that appointed day for the purposes of this Act, and a photocopy or other reproduction, certified by an authorised officer of the 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.

#### **10 Vesting of undertakings in the Bank**

- (1) On an appointed day the appointed undertaking shall, by virtue of this Act and without further assurance, be transferred to the Bank to the intent that the Bank shall succeed to the relevant undertaking as if in all respects the Bank were the same person as the transferor company.
- (2) Where the transfer of any property or liability comprised in an undertaking is governed by the law of any country or territory outside the United Kingdom, the transferor company shall, if the Bank so requires, take all necessary steps for securing that the

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transfer to and vesting in the Bank of the property or liability is fully effective under the law of that country or territory.

## **11 Provision as to trust property and wills**

- (1) Any property transferred to the Bank by virtue of this Act which immediately before the appointed day was held by a transferor company, whether alone or jointly with any other person, as trustee, shall, on and from the appointed day, be held by the Bank alone or, as the case may be, jointly with such other person in the same capacity upon the trusts, and with and subject to the powers, provisions and liabilities, applicable thereto respectively.
- (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 a transferor company as trustee; and
  - (b) any provision therein, or any existing contract for the payment to, or retention by, a transferor company of remuneration for its services in any such capacity, shall, subject to subsection (4) below, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to the transferor company, other than a reference (however worded and whether express or implied) to the terms and conditions of, or to a rate, charge, tariff or scale of fees of, the transferor company, there were substituted a reference to the Bank.
- (3) The following—
  - (a) any will made before an 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 an appointed day, being a will which appoints a transferor company to be a trustee or recipient of any property as trustee, shall, subject to subsection (4) below, be construed and have effect as if for any reference therein to the transferor company 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, the transferor company, there were substituted a reference to the Bank.
- (4) Any right which was exercisable by the transferor company to alter the terms and conditions or the rate, charge, tariff or scale of fees of that transferor company shall on and after the appointed day be exercisable by the Bank.
- (5) No testamentary gift shall be adeemed by reason only of the operation of any of the provisions of this Act.

## **12 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 appointed undertaking.
- (2) Every existing contract relating to the appointed undertaking to which a transferor company is a party shall be construed and have effect on and from the appointed day—
  - (a) as if the Bank had been a party thereto instead of the transferor company;

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- (b) as if, subject to subsection (5) below, for any reference (however worded and whether express or implied) to the transferor company there were substituted a reference to the 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 the transferor company were a reference (as the case may require)—
    - (i) to the directors, officers, representatives or employees of the Bank; or
    - (ii) to such director, officer, representative or employee of the Bank as the Bank may nominate for that purpose; or
    - (iii) in default of nomination, to the director, officer, representative or employee of the 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 the Bank by virtue of this Act) as if the contract, to the extent to which it is enforceable by and against the transferor company, constituted two separate contracts—
    - (i) one of which is enforceable by and against the Bank only as regards the part of the property or, as the case may be, liabilities so transferred to it; and
    - (ii) the other of which is enforceable by and against the transferor company only as regards the part of the property or, as the case may be, liabilities not so transferred to the 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 the transferor company was not a party as they apply to a contract to which subsection (2) above applies.
- (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 subsection (2) above 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 a transferor company which includes the initials, the name or part of the name of that transferor company but, on or after the appointed day, the Bank may change the name or title.
- (6) An offer or invitation to treat made to or by a transferor company before the appointed day shall be construed and have effect on and after the appointed day in relation to the appointed undertaking as an offer or invitation to treat, as the case may be, made to or by the Bank.
- (7) Any account between the transferor company and a customer in relation to the appointed undertaking shall, on the appointed day, become an account between the Bank and the customer subject to the same conditions and incidents as before; and such account shall be deemed for all purposes to be a single continuing account.
- But nothing in this subsection shall affect any right of the transferor company or the Bank or of the customer to vary the conditions or incidents subject to which any account is kept.
- (8) For the purpose of construing and giving effect to any contract which—
- (a) has effect or continues to have effect on, or on and after, an appointed day; and

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- (b) makes reference to a rate, charge, tariff or scale of fees or to terms or conditions published, determined or ascertained from time to time by a transferor company,

the Bank shall have the same rights under that contract as the transferor company had to publish, determine, ascertain, vary or amend rates, charges, tariffs, scales of fees, terms or conditions, and any such rates, charges, tariffs, scales of fees, terms or conditions published, determined, ascertained, varied or amended by the Bank shall apply in place of those which could have been published, determined, ascertained, varied or amended by the transferor company.

- (9) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to or by a transferor company in relation to an appointed undertaking (whether in writing or not and whether or not in relation to an account) shall have effect on and from the appointed day as if given to or, as the case may be, by the Bank.
- (10) Any negotiable instrument, cheque, warrant, draft, letter of credit or order for payment of money, in relation to an appointed undertaking, drawn on or by, or given to, or accepted or endorsed by, the transferor company, or payable at any place of business of the transferor company, whether so drawn, given, accepted, endorsed or payable before, on or after the appointed day, shall have the same effect on and from that day—
  - (a) as if it had been drawn on or by, or given to, or accepted or endorsed by, the Bank; and
  - (b) if relevant, as if the place of business at which it is payable were a place of business of the Bank.
- (11) Any document, claim or demand addressed on or before or after the appointed day to a transferor company pursuant to an existing contract which relates to the appointed undertaking shall be deemed to have been addressed to the Bank.
- (12) The custody of any document or record, goods or other thing held by a transferor company as bailee relating to an appointed undertaking shall pass to the Bank on the appointed day, and the rights and obligations of the transferor company under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of the Bank.
- (13) Any security interest held immediately before the appointed day in relation to an appointed undertaking by the transferor company, or by a nominee or agent of or trustee for that transferor company, as security for the payment or discharge of any debt or liability shall, on and from that day—
  - (a) be held by the Bank or, as the case may require, by that nominee, agent or trustee for the Bank; and
  - (b) be available to the Bank, (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of that debt or liability of the appointed undertaking.
- (14) In relation to any security interest transferred to the Bank by or under this Act and any liabilities thereby secured, the Bank shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which the transferor company would have been entitled and subject if it had continued to hold the security interest.
- (15) Without prejudice to the generality of subsection (14) above, in any case where any existing liability subsists between a transferor company and the Bank, in respect of which—

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- (a) that transferor company or the Bank, or
  - (b) a nominee or agent of or trustee for that transferor company or the Bank,holds a security interest or a counterclaim in respect of which there is a security interest, that liability and, where appropriate, the counterclaim shall, for the purpose of enforcing or realising that security interest, be deemed to continue in effect notwithstanding the transfer to the Bank.
- (16) Any security interest referred to in subsections (13) to (15) above which extends to future advances or liabilities shall, on and from the appointed day, be available to the Bank (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of future advances and future liabilities to the same extent and in the same manner in all respects as it extends immediately before that day to future advances or liabilities.
- (17) Where by virtue of this Act any property or liability of a transferor company becomes property or a liability of the Bank, the Bank and all other persons shall, on and from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that property or liability as if it had at all times been property or a liability of the Bank.
- (18) Any right of action and any remedy available in consequence thereof—
  - (a) which accrues, arises or becomes enforceable or available before an appointed day by or against the transferor company and which relates to the appointed undertaking; or
  - (b) which would, but for this Act, accrue, arise or become enforceable or available by or against a transferor company, on or after the appointed day and which relates to the appointed undertaking,may, subject to the provisions relating to the appointed undertaking in this Act, be enforced or availed of to the same extent by or against the Bank on or after the appointed day.
- (19) Any legal proceedings, applications to any authority or other proceedings for the resolution of a dispute pending or current immediately before an appointed day by or against the transferor company and which relate to the appointed undertaking may be continued by or against the Bank.
- (20) Any judgment, order or award obtained by or against a transferor company which relates to the appointed undertaking and which is not fully satisfied before the appointed day shall, on that day, to the extent to which it is enforceable by or against that transferor company, become enforceable by or against the Bank.
- (21) On an appointed day the Bank—
  - (a) shall succeed to all the rights, liabilities and obligations of the transferor company in respect of data which is comprised in the appointed undertaking and which is subject to the Data Protection Act 1998 (c. 29);
  - (b) shall become the data controller of any data which is comprised in the appointed undertaking and which is subject to the Data Protection Act 1998 in place of the transferor company, and shall be deemed to have been the data controller of all such data at all material times when data was processed;
  - (c) shall be under the same duty by virtue of any law as the transferor company was under to respect the confidentiality and privacy of any person and shall be bound by any specific notice given or request made by the data subject which

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was binding on the transferor company and which required the transferor not to use data for marketing purposes.

- (22) In any consent given by a data subject in respect of such data as is mentioned in subsection (21)(a) above, any reference to the transferor company (or to any subsidiary or holding company of the transferor company or any subsidiary of such a holding company) shall be deemed to include a reference to the Bank and any subsidiary or holding company of the Bank and any subsidiary of such a holding company.
- (23) In subsection (22) above, “holding company” and “subsidiary” shall have the meanings set out in sections 736 and 736A of the 1985 Act.

### 13 Office-holders

No director, secretary or auditor of a transferor company shall by virtue only of this Act become a director, secretary or, as the case may be, auditor of the Bank.

### 14 Accounting provisions

- (1) In this section—

“the 1991 Regulations” means the Bank Accounts Directive (Miscellaneous Banks) Regulations 1991 ([S.I. 1991 No. 2704](#));

“accounts” means all accounting records, any other accounts, statements of account, financial statements or directors' reports required to be prepared by, and in accordance with, the provisions of the 1985 Act or the 1991 Regulations;

“individual accounts” means the accounts of an individual company prepared in accordance with—

- (a) section 226 of and Schedule 4 to the 1985 Act,
- (b) section 255 of and Part I of Schedule 9 to that Act, or
- (c) the 1991 Regulations; and

“shareholder funds” means the called up share capital and the reserves of the transferor company.

- (2) For the purposes of the accounts of the transferor company and the Bank, the transfer of an appointed undertaking to the Bank shall be taken to have been effected immediately after the last financial year of the transferor company and to have been a vesting in the Bank of all the property, rights and liabilities in the appointed undertaking to which the transferor company was entitled or subject immediately before the end of that year.
- (3) The amount to be attributed to any asset and any liability which is taken by virtue of subsection (2) above to have been vested in the Bank immediately after the last financial year of the transferor company shall be the amount attributed to the asset or liability for the purposes of the accounts of the transferor company for its last financial year.
- (4) The amount to be included in the accounts of the Bank in respect of any item shall be determined as if anything done by the transferor company after its last financial year (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, earning any profit or suffering any loss, or by carrying any amount to any provision or reserve, or otherwise) had been done by the Bank.

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- (5) Without prejudice to the operation of this Act, the transfer to the Bank of the appointed undertaking shall be deemed not to give rise to any transaction required by section 221 of the 1985 Act to be entered in the accounts of the Bank or the transferor company.
- (6) In respect of every item (excluding shareholder funds) shown in the balance sheet or profit and loss account of the Bank forming part of its individual accounts for its financial year in which an appointed day occurs, the corresponding amount for the last financial year of the Bank required to be shown in that balance sheet or profit and loss account by—
- (a) section 226 of and Schedule 4 to the 1985 Act,
  - (b) section 255 of and Part I of Schedule 9 to that Act, or
  - (c) the 1991 Regulations,
- shall include any amount corresponding to that item shown by the transferor company in its balance sheet or profit and loss account forming part of its individual accounts for its last financial year.

## **15 Distributable profits or reserves of the Bank**

Without prejudice to the provision of section 14 (accounting provisions) of this Act, for the purpose of ascertaining on an appointed day what profits or reserves, if any, are capable of lawful distribution by the Bank, any profits or reserves of a transferor company relating to the appointed undertaking which were capable of lawful distribution by that transferor company at the end of its last financial year shall be deemed to have become capable of lawful distribution by the Bank immediately after that last financial year.

## **16 Pension scheme**

- (1) In this section “pension scheme” has the same meaning as in section 150 of the Finance Act 2004 (c. 12).
- (2) No pension scheme under which the Bank or a transferor company is the sole employer, the principal employer or a participating employer shall by reason only of the operation of any of the provisions of this Act be terminated or wound-up, in whole or in part.
- (3) In respect of an officer or employee of a transferor company or the Bank, no right to participate in or to qualify himself or any of his dependants to receive benefits under, and no pensionable service for the purposes of, a pension scheme—
- (a) under which the transferor company or the Bank is the sole employer, the principal employer or a participating employer; and
  - (b) of which the officer or employee is a member immediately before the appointed day,
- shall be terminated, interrupted or otherwise affected by reason only of the operation of any of the provisions of this Act.
- (4) The trust deeds, rules and other documents and instruments constituting, governing or otherwise relating to any pension scheme to which the provisions of this section apply shall have effect subject to and in accordance with the provisions of this section.

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## 17 Evidence of transfer

- (1) The production of a Queen's Printer's copy of this Act or a photocopy thereof and such evidence of publication of notice of an appointed day as is specified in subsection (4) of section 9 (appointed day) of this Act shall, for all purposes, be conclusive evidence of the transfer to, and vesting in, the Bank of the relevant undertaking or relevant part of an undertaking, in accordance with the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1) above, any such copy of this Act shall, in relation to any registered securities within the meaning of the Stock Transfer Act 1963 (c. 18) transferred to the Bank 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 of such securities from a transferor company to the Bank.
- (3) Without prejudice to the generality of subsection (1) above—
  - (a) any document made or executed on or after an appointed day whereby the Bank, whether alone or jointly with another person—
    - (i) conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or
    - (ii) applies to be registered as the holder or proprietor of, any property held by a transferor company immediately before the appointed day, whether alone or jointly with another person, shall be sufficient evidence that the interest of the transferor company has been transferred to the Bank, alone or jointly, under this Act; and
  - (b) where there is any other transaction by the Bank on or after the appointed day in connection with, or in relation to, any property or liability which is property or a liability of a transferor company immediately before the appointed day, it shall be deemed in favour of—
    - (i) any other party to the transaction, or
    - (ii) any person claiming through or under him,
 that the Bank has full power and authority for that transaction as if the property or liability had been transferred to it under this Act.
- (4) Without prejudice to the generality of subsection (1) above—
  - (a) any document made or executed on or after an appointed day whereby the transferor company, whether alone or jointly with any other person—
    - (i) conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or
    - (ii) applies to be registered as the holder or proprietor of, any property held by it immediately before the appointed day, whether alone or jointly with another person, shall be as effective as if that property had been conveyed, transferred or registered by the Bank; and
  - (b) where there is any other transaction by a transferor company on or after the appointed day in connection with, or in relation to, any property or liability which is property or a liability of the transferor company immediately before the appointed day, that transaction shall be as effective as if it had been a transaction by the Bank.
- (5) The following—
  - (a) a certificate given by or on behalf of the Bank at any time before the dissolution of a transferor company and whether given before, on or after the appointed day, and



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- (b) a certificate given by or on behalf of the Bank after the dissolution of that transferor company

that any property or liability of the transferor company specified in the certificate will be or has been transferred, as the case may be, to the Bank under this Act shall be conclusive evidence for all purposes of the fact so certified.

- (6) Nothing in this section affects the liability of a transferor company or the Bank to the other of them in respect of anything done, or purported to have been done, by either of them in connection with, or in relation to, any property or liabilities.

## **18 Dissolution of transferor companies**

- (1) A transferor company shall by virtue of this Act be dissolved on the day on which, in pursuance of a request made by or on behalf of the Bank at any time after the whole of that company's undertaking has been transferred to the Bank by virtue of this Act or otherwise, the registrar of companies strikes that transferor company off the register.
- (2) Notwithstanding section 654 of the 1985 Act (property of dissolved company to be bona vacantia), on the day on which a transferor company is struck off the register under subsection (1) above all seals and documents of or relating to the company not transferred to the Bank by virtue of the foregoing provisions of this Act shall, by virtue of this section, be transferred to the Bank and, where they are required to be kept at a place in England, shall be kept by the Bank at such a place.

## **19 Evidence: documents**

All documents which would before the appointed day, have been evidence in respect of any matter for or against a transferor company shall be admissible in evidence in respect of the same matter for or against the Bank.

## **20 Application of Bankers' Books Evidence Act 1879**

- (1) In this section "books" shall be construed in accordance with section 9(2) of the Bankers' Books Evidence Act 1879 (c. 11).
- (2) On and from an appointed day, the said Act of 1879 shall apply to the books of a transferor company transferred to the Bank by virtue of this Act, and to entries made in those books before the appointed day, as if such books were books of the Bank.
- (3) For the purposes of section 4 of the said Act of 1879, books so transferred to the Bank shall be deemed to have been the ordinary books of the Bank 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 business.

## **21 Savings in respect of transfers of property**

- (1) The transfer of any property or liability by virtue of this Act shall not—
- (a) constitute a purchase or creation of an interest in land for the purposes of section 30 (2) of the Landlord and Tenant Act 1954 (c. 56) or constitute a relevant disposal within the meaning of section 4 of the Landlord and Tenant Act 1987 (c. 31) for the purposes of that Act; or

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- (b) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of or dealing with property or of an interest in property for the purposes of any provision in any instrument, contract or order of any court concerning that property or that interest; or
  - (c) give rise to any forfeiture; or
  - (d) invalidate or discharge any contract, security interest or other thing; or
  - (e) require further registration in respect of any security interest; or
  - (f) cause or enable the benefit of any contract, permission, licence or privilege enjoyed by the transferor company or the Bank to be lost or surrendered or otherwise affected, or require the disposal by the transferor company or the Bank of any interest, otherwise than as provided for in this Act; or
  - (g) relieve any person under an obligation to the transferor company of a corresponding obligation to the Bank, or
  - (h) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise have been the case under, any contract or instrument to which the Bank or the transferor company is a party or by which it is bound; or
  - (i) allow any party to any contract to which the Bank or the transferor company is a party to terminate that contract when he would not otherwise have been able to terminate it; or
  - (j) operate so as to merge any leasehold interest in the reversion expectant on it; or
  - (k) entitle any party to any contract to which the Bank or the transferor company is a party to vary the terms of that contract when he would not otherwise have been able to vary those terms or confer a right of benefit on him which he would not otherwise have had; or
  - (l) confer any greater or lesser rights or benefits, or impose any greater or lesser obligations, on any party to any contract to which the transferor company or the Bank is a party when any such greater or lesser rights, benefits or obligations would not otherwise have been conferred or imposed.
- (2) Paragraphs (c) to (l) of subsection (1) above shall apply to subsidiaries of the transferor company and subsidiaries of the Bank as they apply to the transferor company and the Bank respectively.

## **22 Right to issue bank notes**

The transfer to the Bank of an appointed undertaking by virtue of this Act shall have no effect on the Bank's rights under the note issue enactments.

## **23 Transfer of the Society**

- (1) The directors of CMIG may appoint a day to be the appointed day for the undertaking of the Society for the purposes of this Part.
- (2) Where a day is appointed under subsection (1) above the provisions of this Part set out in subsection (3) shall apply as if—
  - (a) the day had been appointed under section 9 (appointed day) above;
  - (b) references in the provisions to the appointed undertaking were references to the undertaking of the Society;
  - (c) references in the provisions to the transferor company or transferor companies were references to the Society; and

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- (d) references in the provisions to the Bank were references to CMIG.
- (3) The provisions referred to in subsection (2) are—
  - Section 9(3) and (4);
  - Sections 10 and 11;
  - Section 12(1) to (6) and (8) to (23);
  - Section 13;
  - Sections 14 and 15 (save that references to the financial year of the Bank shall be treated as references to a financial year determined in accordance with the provisions of section 223 of the 1985 Act); and
  - Sections 16 to 19 and 21.
- (4) On the day appointed under subsection (1) above—
  - (a) the Society shall be dissolved; and
  - (b) the enactments set out in Part 2 of Schedule 2 shall be repealed.