



National Australia Group Europe Act 2001

2001 CHAPTER v

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.

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- (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 same conditions and incidents as theretofore; and such account shall be deemed for all purposes to be a single continuing account:

Provided that nothing herein shall affect any right of Clydesdale 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 existing contract which—
 - (a) has effect or continues to have effect on, or on and after, the appointed day; and
 - (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 Yorkshire Bank,

Clydesdale Bank shall have the same right under that contract as Yorkshire Bank 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 Clydesdale Bank shall apply in place of those which could have been published, determined, ascertained, varied or amended by Yorkshire Bank.

- (9) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to or by Yorkshire Bank (whether in writing or not) shall have effect, on and from the appointed day, as if given to or, as the case may be, by Clydesdale Bank.
- (10) Any negotiable instrument, cheque, warrant, draft, letter of credit or order for payment of money drawn on or by, or given to, or accepted or endorsed by, Yorkshire Bank, or payable at any place of business of Yorkshire Bank, whether so drawn, given, accepted, endorsed or payable before, on or after the appointed day, shall have the same effect, on and from the appointed day, as if it had been drawn on or by, or given to, or accepted or endorsed by, Clydesdale Bank or were payable at the same place of business as Clydesdale Bank.
- (11) Any document, claim or demand addressed after the appointed day to Yorkshire Bank pursuant to an existing contract shall be deemed to have been addressed to Clydesdale Bank.

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- (12) The custody of any document, goods or other thing held by Yorkshire Bank as bailee shall pass to Clydesdale Bank on the appointed day, and the rights and obligations of Yorkshire Bank under any contract of bailment relating to any such document, goods or thing shall on that day become rights and obligations of Clydesdale Bank.
- (13) Any security interest held immediately before the appointed day by or on behalf of Yorkshire Bank as security for the payment or discharge of any debt or liability shall, on and from the appointed day, be held by or on behalf of Clydesdale Bank and be available to Clydesdale 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.
- (14) In relation to any security interest transferred to, and vested in, Clydesdale Bank by or under this Act and any liabilities thereby secured, Clydesdale Bank shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which Yorkshire Bank would have been entitled or 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 Yorkshire Bank and Clydesdale Bank in respect of which Yorkshire Bank or Clydesdale Bank, or a nominee or agent of or trustee for Yorkshire Bank or Clydesdale Bank, holds a security interest, that liability shall, for the purpose of enforcing or realising that security interest, be deemed to continue in effect notwithstanding the transfer to, and vesting in, Clydesdale Bank of the undertaking or any part thereof.
- (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 Clydesdale 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 or liabilities to the same extent and in the same manner in all respects as it was available to Yorkshire Bank immediately before that day as security for the payment or discharge of future advances or liabilities.
- (17) Where by virtue of this Act any property or liability of Yorkshire Bank becomes property or a liability of Clydesdale Bank, Clydesdale 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 Clydesdale Bank.
- (18) Any right of action and any remedy available in consequence thereof—
 - (a) which accrues, arises or becomes enforceable or available before the appointed day by or against Yorkshire Bank, or
 - (b) which would, but for this Act, accrue, arise or become enforceable or available by or against Yorkshire Bank after the appointed day,may to the same extent be enforced or availed of by or against Clydesdale Bank 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 the appointed day by or against Yorkshire Bank may be continued by or against Clydesdale Bank.

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- (20) Any judgment, order or award obtained by or against Yorkshire Bank and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against Yorkshire Bank, become enforceable by or against Clydesdale Bank.
- (21) On the appointed day Clydesdale Bank shall—
- (a) succeed to all the rights, liabilities and obligations of Yorkshire Bank in respect of data which is comprised in the undertaking and which is subject to the Data Protection Act 1998 (c. 29);
 - (b) become the data controller of any data which is comprised in the undertaking and which is subject to the Data Protection Act 1998 in place of Yorkshire Bank, and shall be deemed to have been the data controller of all such data at all material times when data was processed; and
 - (c) be under the same duty by virtue of any law as Yorkshire Bank 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 was binding on Yorkshire Bank and which required Yorkshire Bank 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) above, any reference to Yorkshire Bank (or to any subsidiary or holding company of Yorkshire Bank or any subsidiary of such a holding company) shall be deemed to include a reference to Clydesdale Bank and any subsidiary or holding company of Clydesdale Bank and any subsidiary of such a holding company.