



# HBOS Group Reorganisation Act 2006

## 2006 CHAPTER i

### PART 3

#### TRANSFER OF UNDERTAKINGS

#### 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;
  - (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—

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- (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
  - (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

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- 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—
- (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

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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 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.