



# Banking Act 2009

## 2009 CHAPTER 1

### PART 1

#### SPECIAL RESOLUTION REGIME

##### *Transfer of property*

### **33 Property transfer instrument**

- (1) A property transfer instrument is an instrument which—
  - (a) provides for property, rights or liabilities of a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of a specified bank (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (2) A property transfer instrument may relate to—
  - (a) all property, rights and liabilities of the specified bank,
  - (b) all its property, rights and liabilities subject to specified exceptions,
  - (c) specified property, rights or liabilities, or
  - (d) property, rights or liabilities of a specified description.

### **34 Effect**

- (1) In this section “transfer” means a transfer provided for by a property transfer instrument.
- (2) A transfer takes effect by virtue of the instrument (and in accordance with its provisions as to timing or other ancillary matters).
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (4) In subsection (3) “restriction” includes—

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- (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
  - (b) a requirement for consent (by any name).
- (5) A property transfer instrument may provide for a transfer to be conditional upon a specified event or situation—
  - (a) occurring or arising, or
  - (b) not occurring or arising.
- (6) A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under subsection (5); and the consequences may include—
  - (a) automatic vesting in the original transferor;
  - (b) an obligation to effect a transfer back to the original transferor, with specified consequences for failure to comply (which may include provision conferring a discretion on a court or tribunal);
  - (c) provision making a transfer or anything done in connection with a transfer void or voidable.
- (7) Where a property transfer instrument makes provision in respect of property held on trust (however arising) it may also make provision about—
  - (a) the terms on which the property is to be held after the instrument takes effect (which provision may remove or alter the terms of the trust), and
  - (b) how any powers, provisions and liabilities in respect of the property are to be exercisable or have effect after the instrument takes effect.

### **35 Transferable property**

- (1) A property transfer instrument may transfer any property, rights or liabilities including, in particular—
  - (a) property, rights and liabilities acquired or arising between the making of the instrument and the transfer date,
  - (b) rights and liabilities arising on or after the transfer date in respect of matters occurring before that date,
  - (c) property outside the United Kingdom,
  - (d) rights and liabilities under the law of a country or territory outside the United Kingdom, and
  - (e) rights and liabilities under an enactment (including legislation of the European Union).
- (2) Section 32 applies for the interpretation of this section (with the necessary modification).

### **36 Continuity**

- (1) A property transfer instrument may provide—
  - (a) for a transfer to be, or to be treated as, a succession;
  - (b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.

- (2) A property transfer instrument may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.
- (3) A property transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.
- (4) A property transfer instrument which transfers or enables the transfer of a contract of employment may include provision about continuity of employment.
- (5) A property transfer instrument may modify references (express or implied) in an instrument or document to a transferor.
- (6) In so far as rights and liabilities in respect of anything transferred are enforceable after transfer, a property transfer instrument may provide for apportionment between transferor and transferee to a specified extent and in specified ways.
- (7) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instrument; but a modification—
  - (a) must achieve a result that could have been achieved by the instrument, and
  - (b) may not transfer (or arrange for the transfer of) property, rights or liabilities.
- (8) A property transfer instrument may require or permit—
  - (a) a transferor to provide a transferee with information and assistance;
  - (b) a transferee to provide a transferor with information and assistance.
- (9) Section 32 applies for the interpretation of this section (with the necessary modification).

### **37 Licences**

- (1) A licence in respect of anything transferred by property transfer instrument shall continue to have effect despite the transfer.
- (2) A property transfer instrument may disapply subsection (1) to a specified extent.
- (3) Where a licence imposes rights or obligations, a property transfer instrument may apportion responsibility for exercise or compliance between transferor and transferee.
- (4) In this section “licence” includes permission and approval and any other permissive document in respect of anything transferred.

### **38 Termination rights, &c.**

- (1) In this section “default event provision” means a Type 1 or Type 2 default event provision as defined in subsections (2) and (3).
- (2) A Type 1 default event provision is a provision of a contract or other agreement that has the effect that if a specified event occurs or situation arises—
  - (a) the agreement is terminated, modified or replaced,
  - (b) rights or duties under the agreement are terminated, modified or replaced,
  - (c) a right accrues to terminate, modify or replace the agreement,

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- (d) a right accrues to terminate, modify or replace rights or duties under the agreement,
  - (e) a sum becomes payable or ceases to be payable,
  - (f) delivery of anything becomes due or ceases to be due,
  - (g) a right to claim a payment or delivery accrues, changes or lapses,
  - (h) any other right accrues, changes or lapses, or
  - (i) an interest is created, changes or lapses.
- (3) A Type 2 default event provision is a provision of a contract or other agreement that has the effect that a provision of the contract or agreement—
- (a) takes effect only if a specified event occurs or does not occur,
  - (b) takes effect only if a specified situation arises or does not arise,
  - (c) has effect only for so long as a specified event does not occur,
  - (d) has effect only while a specified situation lasts,
  - (e) applies differently if a specified event occurs,
  - (f) applies differently if a specified situation arises, or
  - (g) applies differently while a specified situation lasts.
- (4) For the purposes of subsections (2) and (3) it is the effect of a provision that matters, not how it is described (nor, for example, whether it is presented in a positive or a negative form).
- (5) A property transfer instrument may provide for subsection (6) or (7) to apply (but need not apply either).
- (6) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies.
- (7) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies except in so far as the instrument provides otherwise.
- (8) In subsections (6) and (7) a reference to the property transfer instrument is a reference to—
- (a) the making of the instrument,
  - (b) anything that is done by the instrument or is to be, or may be, done under or by virtue of the instrument, and
  - (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument.
- (9) Provision under subsection (5) may apply subsection (6) or (7)—
- (a) generally or only for specified purposes, cases or circumstances;
  - (b) differently for different purposes, cases or circumstances.
- (10) A thing is not done by virtue of an instrument for the purposes of subsection (8) (b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been transferred by the instrument.

### **39 Foreign property**

- (1) This section applies where a property transfer instrument transfers foreign property.
- (2) In subsection (1) “foreign property” means—

- (a) property outside the United Kingdom, and
  - (b) rights and liabilities under foreign law.
- (3) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of foreign law (if it is not wholly effective by virtue of the property transfer instrument).
- (4) Until the transfer is effective as a matter of foreign law, the transferor must—
- (a) hold the property or right for the benefit of the transferee (together with any additional property or right accruing by virtue of the original property or right), or
  - (b) discharge the liability on behalf of the transferee.
- (5) The transferee must meet any expenses of the transferor in complying with this section.
- (6) An obligation imposed by this section is enforceable as if created by contract between the transferor and transferee.
- (7) The transferor must comply with any directions of the Bank of England in respect of the obligations under subsections (3) and (4); and—
- (a) a direction may disapply subsections (3) and (4) to a specified extent, and
  - (b) obligations imposed by direction are enforceable as if created by contract between the transferor and the Bank of England.
- (8) In this section “foreign law” means the law of a country or territory outside the United Kingdom.

#### **40 Incidental provision**

- (1) A property transfer instrument may include incidental, consequential or transitional provision.
- (2) In relying on subsection (1) an instrument—
- (a) may make provision generally or only for specified purposes, cases or circumstances, and
  - (b) may make different provision for different purposes, cases or circumstances.

#### **41 Procedure**

- (1) As soon as is reasonably practicable after making a property transfer instrument in respect of a bank the Bank of England shall send a copy to—
- (a) the bank,
  - (b) the Treasury,
  - (c) the FSA, and
  - (d) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a property transfer instrument the Bank of England shall publish a copy—
- (a) on the Bank’s internet website, and
  - (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected.

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- (3) Where the Treasury receive a copy of a property transfer instrument under subsection (1) they shall lay a copy before Parliament.

#### **42 Supplemental instruments**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 11(2) or 12(2) (“the original instrument”).
- (2) The Bank of England may make one or more supplemental property transfer instruments.
- (3) A supplemental property transfer instrument is a property transfer instrument which—
- (a) provides for property, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument);
  - (b) makes other provision of a kind that an original property transfer instrument may make under section 33(1)(b) (whether in connection with a transfer under the original instrument or in connection with a transfer under that or another supplemental instrument).
- (4) Sections 7 and 8 do not apply to a supplemental property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (5) Before making a supplemental property transfer instrument the Bank of England must consult—
- (a) the FSA, and
  - (b) the Treasury.
- (6) The possibility of making a supplemental property transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making of a new instrument in accordance with section 11(2) or 12(2) (and not in reliance on subsection (2) above).

#### **43 Onward transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in respect of a bridge bank in accordance with section 12(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward property transfer instruments.
- (3) An onward property transfer instrument is a property transfer instrument which—
- (a) provides for property, rights or liabilities of the bridge bank to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bridge bank (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (4) An onward property transfer instrument may relate to property, rights or liabilities of the bridge bank whether or not they were transferred under the original instrument.
- (5) An onward property transfer instrument may not transfer property, rights or liabilities to the transferor under the original instrument.

- (6) Sections 7, 8 and 52 do not apply to an onward property transfer instrument (but for other purposes it is to be treated in the same way as any other property transfer instrument, including for the purposes of the application of a power under this Part).
- (7) Before making an onward property transfer instrument the Bank of England must consult—
  - (a) the FSA, and
  - (b) the Treasury.
- (8) Section 42 applies where the Bank of England has made an onward property transfer instrument.

#### **44 Reverse property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 12(2) (“the original instrument”) providing for the transfer of property, rights or liabilities to a bridge bank.
- (2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the bridge bank.
- (3) If the Bank of England makes an onward property transfer instrument under section 43 the Bank may make one or more reverse property transfer instruments in respect of property, rights or liabilities of a transferee of any of the following kinds under the onward property transfer instrument—
  - (a) a company wholly owned by the Bank of England,
  - (b) a company wholly owned by the Treasury, or
  - (c) a company wholly owned by a nominee of the Treasury.
- (4) A reverse property transfer instrument is a property transfer instrument which—
  - (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
  - (b) provides for transfer to the bridge bank (where subsection (3) applies);
  - (c) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) or (b) (whether the transfer has been or is to be effected by that instrument or otherwise).
- (5) Sections 7, 8 and 52 do not apply to a reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (6) Before making a reverse property transfer instrument the Bank of England must consult—
  - (a) the FSA, and
  - (b) the Treasury.
- (7) Section 42 applies where the Bank of England has made a reverse property transfer instrument.

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#### **45 Temporary public ownership: property transfer**

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 13(2) (“the original order”).
- (2) The Treasury may make one or more property transfer orders.
- (3) A property transfer order is an order which—
  - (a) provides for property, rights or liabilities of the bank to be transferred (whether accruing or arising before or after the original order);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bank (whether the transfer has been or is to be effected by the order or otherwise).
- (4) Sections 7, 8 and 9 do not apply to a property transfer order.
- (5) A property transfer order is to be treated—
  - (a) in the same way as a share transfer order for the procedural purposes of section 25, but
  - (b) as a property transfer instrument for all other purposes (including for the purposes of the application of powers under this Part).
- (6) In the application of section 39 by virtue of subsection (5)(b) above, the power to give directions under section 39(7) vests in the Treasury (instead of the Bank of England).
- (7) Section 42 applies where the Treasury has made a property transfer order.
- (8) Before making a property transfer order the Treasury must consult—
  - (a) the FSA, and
  - (b) the Bank of England.

#### **46 Temporary public ownership: reverse property transfer**

- (1) This section applies where the Treasury have made a property transfer order in accordance with section 45(2) (“the original order”) providing for the transfer of property, rights or liabilities to a company wholly owned by—
  - (a) the Bank of England,
  - (b) the Treasury, or
  - (c) a nominee of the Treasury.
- (2) The Treasury may make one or more reverse property transfer orders in respect of property, rights or liabilities of the transferee under the original order.
- (3) A reverse property transfer order is a property transfer order which—
  - (a) provides for transfer to the transferor under the original order;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.
- (4) Sections 7, 8 and 9 do not apply to a reverse property transfer order.
- (5) A reverse property transfer order is to be treated—
  - (a) in the same way as a share transfer order for the procedural purposes of section 25, but



- (b) as a property transfer instrument for all other purposes (including for the purposes of the application of a power under this Part).
- (6) In the application of section 39 by virtue of subsection (5)(b) above, the power to give directions under section 39(7) vests in the Treasury (instead of the Bank of England).
- (7) Before making a reverse property transfer order the Treasury must consult—
  - (a) the FSA, and
  - (b) the Bank of England.
- (8) Section 42 applies where the Treasury have made a reverse property transfer order.

#### **47 Restriction of partial transfers**

- (1) In this Part “partial property transfer” means a property transfer instrument which provides for the transfer of some, but not all, of the property, rights and liabilities of a bank.
- (2) The Treasury may by order—
  - (a) restrict the making of partial property transfers;
  - (b) impose conditions on the making of partial property transfers;
  - (c) require partial property transfers to include specified provision or provision to a specified effect;
  - (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section).
- (3) Provision under subsection (2) may, in particular, refer to particular classes of deposit.
- (4) An order may apply to transfers generally or only to transfers—
  - (a) of a specified kind, or
  - (b) made or applying in specified circumstances.
- (5) An order—
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### **48 Power to protect certain interests**

- (1) In this section—
  - (a) “security interests” means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another,
  - (b) “title transfer collateral arrangements” are arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged,
  - (c) “set-off” arrangements are arrangements under which two or more debts, claims or obligations can be set off against each other,
  - (d) “netting arrangements” are arrangements under which a number of claims or obligations can be converted into a net claim or obligation and include, in

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particular, “close-out” netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt, and

- (e) “protected arrangements” means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.
- (2) The Treasury may by order—
- (a) restrict the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
  - (b) impose conditions on the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
  - (c) require partial property transfers to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;
  - (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section).
- (3) An order may apply to protected arrangements generally or only to arrangements—
- (a) of a specified kind, or
  - (b) made or applying in specified circumstances.
- (4) An order may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, an order may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.
- (5) In this section “arrangements” includes arrangements which—
- (a) are formed wholly or partly by one or more contracts or trusts;
  - (b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;
  - (c) wholly or partly arise automatically as a matter of law;
  - (d) involve any number of parties;
  - (e) operate partly by reference to other arrangements between other parties.
- (6) An order—
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.