
STATUTORY INSTRUMENTS

2008 No. 2666

The Transfer of Rights and Liabilities to ING Order 2008

PART 2

THE TRANSFER

The transfer

3.—(1) By virtue of this Order all the rights and liabilities transferred to Deposits Management (Heritable) by article 3 of the first Order are transferred to ING.

(2) From the effective time, ING shall—

- (a) have the same rights and obligations in relation to depositors in relation to the transferred accounts as it would have if Heritable's relevant terms of business applied; and
- (b) be liable to pay to depositors any accrued interest on the transferred accounts as at the time of coming into force of the first Order and any interest accruing after that time on those accounts.

(3) In paragraph (2) "transferred accounts" has the same meaning as in the first Order.

(4) Paragraph (1) does not apply to any liability in respect of any breach of contract or other duty which arose before the effective time.

(5) The transfer under paragraph (1) takes place at the effective time.

No consent or concurrence required

4. The transfer is effective despite the absence of any required consent or concurrence to or with the transfer.

Associated liability and interference

5.—(1) The transfer takes effect as if—

- (a) no associated liability existed in respect of any failure to comply with any requirement in respect of the transfer; and
- (b) there were no associated interference with the rights and liabilities transferred.

(2) In this article, "associated liability" and "associated interference" have the meanings given in paragraph 2(2) of Schedule 2 to the Act.

Interests, rights and liabilities of third parties relating to property, rights and liabilities transferred

6.—(1) No interest or right of any third party relating to any right or liability transferred by article 3, shall arise or become exercisable by virtue of or in connection with this Order.

(2) Save as otherwise provided in this Order, no third party shall, by virtue of or in connection with this Order, incur any liability or be subject to any obligation relating to any right or liability transferred by article 3.

(3) Without prejudice to the generality of paragraphs (1) and (2)—

- (a) the consequences specified in paragraph (4) shall not arise in respect of any relevant instrument as a result of the transfer or any other thing done, or matter arising, by virtue of or in connection with the transfer; and
- (b) any circumstances which, but for sub-paragraph (a), would give rise to the consequences specified in paragraph (4) shall be taken not to have arisen for the purposes of any relevant instrument.

(4) The consequences are—

- (a) the termination of a relevant instrument or any rights or obligations under it;
- (b) any right to terminate a relevant instrument or any right or obligation under it becoming exercisable;
- (c) any amount becoming due and payable or capable of being declared due and payable;
- (d) any other change in the amount or timing of any payment falling to be made or due to be received by any person;
- (e) any right to withhold, net or set off any payment becoming exercisable;
- (f) any event of default or breach of any right arising;
- (g) any right not to advance any amount becoming exercisable;
- (h) any obligation to provide or transfer any deposit or collateral;
- (i) any right to give or withhold any consent or approval; or
- (j) any other right or remedy (whether or not similar in kind to those referred to in sub-paragraphs (a) to (i)) arising or becoming exercisable.

(5) Without prejudice to paragraph (4), any provision in a relevant instrument that, as a result of the transfer or any other thing done, or matter arising, by virtue of or in connection with the transfer, provides for an obligation not to be created, suspends or extinguishes (in whole or in part) such an obligation or renders such an obligation subject to conditions, shall be of no effect.

(6) In this article—

“relevant instrument” has the same meaning as in paragraph 4(3) of Schedule 1 to the Act and the specified connection referred to in paragraph 4(3)(c) of that Schedule is between Heritable and those undertakings whose assets and liabilities, profits and losses are consolidated in the consolidated accounts of Heritable; and

“third party” shall be construed in accordance with paragraph 2(3) of Schedule 2 to the Act.

Construction of documents etc.

7. As from the effective time, and save as otherwise provided in this Order—

- (a) agreements made or other things done by or in relation to Heritable shall be treated, so far as may be necessary for the purposes of or in connection with the transfer, but not otherwise, as made or done by or in relation to ING, as the case may be; and
- (b) references to Heritable, or to any officer or employee of Heritable, in instruments or documents relating to the rights and liabilities transferred by or under article 3 shall have effect as if they were references to ING, or to any officer or employee of ING, as the case may be.

Provision of information and assistance

8. Heritable shall provide ING with such information and assistance as is reasonably requested by ING—

- (a) in relation to the rights and liabilities transferred by article 3;
- (b) for any purpose relating to this Order;
- (c) for any purpose relating to any other function of ING which relates to its functions under this Order.