



# Unibank Act 1993

## 1993 CHAPTER xviii

An Act to provide for the transfer to and vesting in Unibank A/S of the undertaking of Unibank plc; and for other purposes. [5th November 1993]

WHEREAS Unibank plc (hereinafter called “plc”) is a company incorporated under the Companies Act 1985 as a public company limited by shares and carries on the business of banking, the registered office of plc being situated at 107, Cheapside, London EC2V 6DA:

And whereas Unibank A/S (hereinafter called “A/S”) is a corporation existing under the laws of Denmark which carries on the business of banking and is registered under Part XXIII of the Companies Act 1985:

And whereas plc is an authorised institution under the Banking Act 1987 and A/S is a quasi-European authorised institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992:

And whereas A/S is the beneficial owner of all the issued shares of Unidanmark Holding plc which in turn is the beneficial owner of all the issued shares of plc:

And whereas for the better conduct of the business of plc, it is expedient that provision be made for the transfer to and vesting in A/S of the undertaking of plc and that that transfer and vesting should be effected without interference with the conduct and continuity of the businesses carried on by A/S and plc:

And whereas it is expedient that the other provisions in this Act should be enacted:

And whereas the objects of this Act cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 1 Short title

This Act may be cited as the Unibank Act 1993.

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## 2 Interpretation

(1) In this Act, unless the subject or context otherwise requires—

“appointed day” means such day as may, under section 3 (Appointed day) of this Act, be appointed for the purposes of this Act;

“A/S” means Unibank A/S;

“customer” includes any person having a bank account or other dealing, transaction, agreement or arrangement with A/S or, as the case may be, plc;

“enactment” means any enactment in this Act or in any general or local Act or in any order, rule or regulation made under any Act;

“excluded assets” means all property of whatever nature of plc identified as being excluded assets in a joint certificate given by or on behalf of plc and A/S at any time before the appointed day;

“excluded liabilities” means all liabilities of whatever nature of plc identified as being excluded liabilities in a joint certificate given by or on behalf of plc and A/S at any time before the appointed day and all liabilities of whatever nature of plc relating to an excluded asset;

“existing” means existing, outstanding or in force immediately before the appointed day;

“liabilities” includes duties and obligations of every description (whether present or future, actual or contingent);

“plc” means Unibank plc;

“property” means property and assets of every description (whether present or future, actual or contingent), and includes property and assets held on trust or in a fiduciary capacity and securities, rights, benefits and powers of every description;

“security” includes a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment by way of security, indemnity, right of set off, undertaking or other means of securing payment or discharge of a debt or liability (whether present or future, actual or contingent);

“undertaking” means the business and all existing property and liabilities of whatever nature of plc, except excluded assets and excluded liabilities, but does not include documents required to be kept by plc pursuant to the provisions of the Companies Act 1985; and

“will” includes a codicil and any other testamentary writing.

(2) Any reference in this Act to property or liabilities of plc is a reference to property or liabilities to which plc is for the time being entitled or subject (whether beneficially or in any fiduciary capacity), wherever such property or liabilities are situated or arise and whether or not capable of being transferred or assigned by plc and whether plc is entitled or subject to the property or liabilities under the law of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.

## 3 Appointed day

(1) The directors of A/S may appoint a day to be the appointed day for the purposes of this Act:

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Provided that the day appointed under this subsection shall not be before the requirements of paragraph 1 of Schedule 2 to the Banking Coordination (Second Council Directive) Regulations 1992 have been complied with in relation to the establishment of a branch of A/S within the United Kingdom.

- (2) Before the day so appointed A/S shall publish in the London Gazette, the Edinburgh Gazette and the Belfast Gazette notice of the day appointed, stating that it is the appointed day for the purposes of this Act.

#### **4 Vesting of undertaking in A/S**

- (1) On the appointed day the undertaking shall, by virtue of this Act and without further assurance, be transferred to, and vest in, A/S to the intent that A/S shall succeed to the undertaking as if in all respects A/S were the same person in law as plc.
- (2) Where the transfer or vesting of any property or liability forming part of the undertaking is governed by the law of any country or territory outside the United Kingdom, plc shall, if A/S so requires, take all necessary steps for securing that the transfer and vesting of the property or liability to and in A/S is fully effective under the law of that country or territory.

#### **5 Provisions as to trust property transferred and vested and provisions as to wills**

- (1) Any property transferred to, and vested in, A/S by virtue of this Act which immediately before the appointed day was held by plc, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will (whether originally so appointed or not, and whether appointed under hand or seal, or by order of any court), or as executor of the will, or administrator of the estate of a deceased person, or as judicial trustee appointed by order of any court, or in any other fiduciary capacity, shall, on and from the appointed day, be held by A/S 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) Any existing instrument or order of any court under or by virtue of which any property became or may become vested in plc in any such capacity, and any provision therein, or any existing contract or arrangement for the payment to, or retention by, plc of remuneration for its services in any such capacity, shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to plc other than a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, plc, there were substituted a reference to A/S.
- (3) Any will made before the appointed day which has not been proved in any part of the United Kingdom before the appointed day, and any will made on or after the appointed day, being a will which appoints plc to be an executor, trustee or recipient of any property as trustee, shall be construed and have effect as if for any reference therein to plc as such executor, 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 scale of fees of, plc, there were substituted a reference to A/S.

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- (4) No testamentary gift shall be deemed by reason only of the operation of any of the provisions of this Act.

## **6 Supplementary provisions as to transfer and vesting**

Without prejudice to the generality of the foregoing provisions of this Act but subject to any provision of this Act to the contrary effect, the following provisions shall have effect in relation to the undertaking or any part thereof:—

- (1) Every existing contract to which plc is a party (whether in writing or not) shall be construed and have effect on and from the appointed day—
- (a) as if A/S had been a party thereto instead of plc;
  - (b) as if for any reference (however worded and whether express or implied) to plc there were substituted, as respects anything falling to be done on or after the appointed day, a reference to A/S;
  - (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 plc were, as respects anything falling to be done on or after the appointed day, a reference to the directors, officers, representatives or employees of A/S, as the case may require, or to such director, officer, representative or employee of A/S as A/S may appoint for that purpose or, in default of appointment, to the director, officer, representative or employee of A/S 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, and vested in, A/S by virtue of this Act, as if the contract, to the extent to which it is enforceable by and against plc, constituted two separate contracts, one of which is enforceable by and against A/S as regards the part of the property or, as the case may be, liabilities so transferred to, and vested in, it and not as regards the other part, and the other of which is enforceable by and against plc as regards the part of the property or, as the case may be, liabilities not so transferred to, and vested in, A/S and not as regards the other part:
- (2) On and from the appointed day—
- (a) sub-paragraphs (b) and (c) of paragraph (1) above shall apply to any enactment other than the provisions of this Act and to any provision of any existing contract to which plc was not a party; and
  - (b) sub-paragraphs (a), (b) and (c) of that paragraph shall apply to any provision of any other existing document (not being a contract or a will);

as they apply to a contract to which paragraph (1) above applies:

Provided that the said sub-paragraphs (b) and (c) shall not apply to any existing authorisation or exemption under any enactment regulating the carrying on of the business of plc:

- (3) Any account between plc and a customer shall, on and from the appointed day, become an account between A/S 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:

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Provided that nothing herein shall affect any right of A/S or of the customer to vary the conditions or incidents subject to which any account is kept:

- (4) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to plc (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 A/S:
- (5) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, plc, or payable at any place of business of plc, 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 given to, or accepted or endorsed by, A/S, or were payable at the same place of business of A/S:
- (6) The custody of any document or record, goods or other thing held by plc as bailee shall pass to A/S on the appointed day, and the rights and obligations of plc under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of A/S:
- (7)
  - (a) Any security held immediately before the appointed day by plc, or by a nominee or agent of or trustee for plc, as security for the payment or discharge of any liability, shall, on and from the appointed day, be held by or, as the case may require, by that nominee, agent or trustee for, A/S and be available to A/S (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 liability:
  - (b) In relation to any security transferred to, and vested in, A/S by or under this Act and any liabilities thereby secured, A/S shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which plc would have been entitled or subject if it had continued to hold the security:
  - (c) Without prejudice to the generality of sub-paragraph (b) above, in any case where any existing liability subsists between plc and A/S in respect of which plc or A/S, or a nominee or agent of or trustee for plc or A/S, holds security, that liability shall, for the purpose of enforcing or realising that security, be deemed to continue in effect notwithstanding the transfer to, and vesting in, A/S of the undertaking or any part thereof:
  - (d) Any security referred to in the foregoing provisions of this paragraph which extends to future advances or liabilities shall, on and from the appointed day, be available to A/S (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 future advances or liabilities were secured thereby immediately before that day:
- (8) Where by virtue of this Act any property or liability of plc becomes property or a liability of A/S, A/S 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 A/S; and any legal proceedings or applications to any authority pending immediately before the appointed day by or against plc may be continued by or against A/S:

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- (9) Any judgment or award obtained by or against plc and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against plc, become enforceable by or against A/S:
- (10) The Data Protection Registrar may, on and from the appointed day, serve on A/S any notice under section 10 of the Data Protection Act 1984 which he could have served on plc in respect of a breach by plc of the data protection principles; but the transfer to, and vesting in, A/S by this Act of the undertaking (and any disclosure to A/S of any information in contemplation or as a result thereof) shall not amount to a breach of any duty of confidentiality to which plc is subject immediately before the appointed day or to a contravention by A/S or plc of the data protection principles.

## 7 Accounting provisions

- (1) For the purposes of the accounts of A/S and plc, the transfer of the undertaking of plc to A/S by this Act shall be taken to have been effected immediately after the last financial year of plc and to have been a vesting of all the property, rights and liabilities to which plc was entitled or subject immediately before the end of that year.
- (2) The amount to be attributed to any asset and any liability which is taken by virtue of subsection (1) above to have been vested in A/S immediately after the last financial year of plc shall be the amount attributed to the asset or liability for the purposes of the accounts of plc for its last financial year.
- (3) The amount to be included in the accounts of A/S in respect of any item shall be determined as if anything done by plc after its last financial year (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by A/S.
- (4) Without prejudice to the operation of this Act the transfer of the undertaking of plc to A/S on the appointed day shall be deemed not to give rise to any transaction required by section 221 of the Companies Act 1985 to be entered in the accounts of plc or A/S.
- (5) In respect of every item shown in the balance sheet or profit and loss account of A/S forming part of its individual accounts for its financial year in which the appointed day occurs, the corresponding amount for the last financial year of A/S, required to be shown in that balance sheet or profit and loss account by section 226 of and Schedule 4 to the Companies Act 1985 or section 255 of and Part I of Schedule 9 to that Act, shall include any amount corresponding to that item shown by plc in its balance sheet or profit and loss account forming part of its individual accounts for that year.
- (6) In this section—

“financial year” means a financial year determined in accordance with the provisions of section 223 of the Companies Act 1985 and “last financial year” means the last completed financial year of A/S or plc, as the case may be, before the appointed day;

“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 Companies Act 1985 and “individual accounts” means the accounts of an individual company prepared in accordance with section 226 of and Schedule 4 to that Act or section 255 of and Part I of Schedule 9 to that Act.

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## **8 Contracts of employment**

- (1) Paragraph (1) of section 6 (Supplementary provisions as to transfer and vesting) of this Act applies to a contract for the employment of any person by plc; and employment with plc and A/S under any such contract shall be deemed for all purposes to be a single continuing employment.
- (2) No director, secretary or auditor of plc shall by virtue only of this Act become a director, secretary or, as the case may be, auditor of A/S or become entitled to hold an equivalent position in relation to a company incorporated outside the United Kingdom.

## **9 Pensions**

- (1) Any pension scheme of plc shall, on and from the appointed day, become a pension scheme of A/S and the trust deeds, rules and other documents and instruments constituting or relating to the same shall have effect accordingly.
- (2) No officer or other employee of plc who, by virtue of this Act, becomes an officer or employee of A/S shall be entitled as of right to participate in any existing pension fund established by A/S.

## **10 Evidence: books and documents**

- (1) All books and other documents which would, before the appointed day, have been evidence in respect of any matter for or against plc shall be admissible in evidence in respect of the same matter for or against A/S.
- (2) In this section “documents” has the same meaning as in section 10 of the Civil Evidence Act 1968.

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

- (1) On and from the appointed day the Bankers' Books Evidence Act 1879 shall apply to the books of plc transferred to, and vested in, A/S by virtue of this Act, and to entries made in those books before the appointed day, as if such books were the books of A/S.
- (2) For the purposes of section 4 of the said Act of 1879, books so transferred to, and vested in, A/S shall be deemed to have been the ordinary books of A/S 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.
- (3) In this section “books” shall be construed in accordance with section 9 (2) of the said Act of 1879.

## **12 Evidence of transfer and vesting**

- (1) Subject to subsection (5) below, the production of a Queen’s Printer’s copy of this Act shall, for all purposes, be conclusive evidence of the transfer of any property and liabilities of plc to A/S, and of the vesting thereof in A/S, 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

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Act 1963 transferred to, and vested in, A/S 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 plc to A/S.

- (3) Without prejudice to the generality of subsection (1) above—
- (a) any document made or executed on or after the appointed day whereby A/S, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by plc immediately before the appointed day, whether alone or jointly with any other person, shall be sufficient evidence that the interest of plc in that property has been transferred to and vested in A/S under this Act; and
  - (b) where there is any other transaction by A/S on or after the appointed day in connection with, or in relation to, any property or liability which is property or a liability of plc immediately before the appointed day, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that A/S has full power and authority for that transaction as if the property or liability had been transferred to and vested in it under this Act.
- (4) Without prejudice to the generality of subsection (1) above—
- (a) any document made or executed on or after the appointed day whereby plc, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or 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 any other person, shall be sufficient evidence that its interest in that property has not been transferred to and vested in A/S under this Act; and
  - (b) where there is any other transaction by plc on or after the appointed day in connection with, or in relation to, any property or liability which is property or a liability of plc immediately before the appointed day, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that plc has full power and authority for that transaction as if the property or liability had not been transferred to and vested in A/S under this Act.
- (5) A joint certificate given by or on behalf of plc and A/S, whether given before, on or after the appointed day, that any property or liability specified in the certificate, and owned by plc or to which plc is subject, will transfer and vest, or has transferred and vested, as the case may be, to and in A/S, or will not transfer and vest, or has not transferred and vested, as the case may be, to and in A/S, under this Act shall be conclusive evidence for all purposes of the fact so certified.
- (6) Nothing in this section affects the liability of plc or A/S 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.
- (7) In this section “convey” has the same meaning as in the Law of Property Act 1925.

### **13 Transfer and vesting of interest in land**

The transfer and vesting of an interest in land by virtue of this Act shall not—

- (a) constitute a purchase or creation of that interest for the purposes of section 30 (2) of the Landlord and Tenant Act 1954; or



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- (b) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of that interest for the purposes of any provision in any instrument concerning that interest; or
- (c) give rise to any forfeiture; or
- (d) invalidate or discharge any contract or security; or
- (e) operate so as to merge any leasehold interest in the reversion expectant on it.

#### **14 Dissolution of plc**

- (1) By virtue of this Act plc shall be dissolved on the day on which, in pursuance of a request made by or on behalf of A/S at any time after the appointed day, the registrar of companies strikes plc off the register.
- (2) Notwithstanding section 654 of the Companies Act 1985 (property of a dissolved company), on the day on which plc is struck off the register under subsection (1) above all documents required to be kept by plc pursuant to the provisions of the said Act of 1985 shall, by virtue of this Act, be transferred to, and vest in, A/S and, where so required to be kept at a place in England, shall be kept by A/S at such place.

#### **15 Saving for enactments concerning banking institutions**

Nothing in this Act shall exempt A/S or plc from the provisions of any enactment regulating the carrying on of the business of either of them.

#### **16 Application to Scotland and Northern Ireland**

- (1) This Act shall extend to Scotland and Northern Ireland.
- (2) In the application of this Act to Scotland the following provisions shall have effect:—
  - (a) In the construction of this Act—
    - “assignment” includes an assignation;
    - “bailee” includes a custodian or a holder on deposit or pledge and
    - “contract of bailment” includes any other contract regulating custody of things;
    - “debenture” includes a floating charge or any instrument containing a floating charge;
    - “forfeiture” includes irritancy;
    - “freehold land” includes heritable property;
    - “judgment” includes a decree;
    - “judicial trustee” includes a judicial factor;
    - “mortgage” includes a standard security, an assignation or disposition ex facie absolute and any agreement qualifying the same, a bond and disposition or assignation in security, a cash credit bond and disposition or assignation in security, an assignation in security and any real right or burden of whatever kind in the nature of a security; and
    - “will” includes a trust disposition and settlement and any deed taking effect on the death of any person whereby any part of his estate is disposed of, or under which a succession thereto arises:
  - (b) All standard securities and cash credit bonds and dispositions or assignations in security expressed to be in favour of plc vested in A/S by virtue of this Act

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shall, on and from the appointed day, have the same effect in favour of A/S up to the maximum amounts stated therein respectively in all respects as if they had been originally granted in favour of A/S for such maximum amounts:

- (c) To enable A/S to complete a title, if thought fit, to any property vested in it by virtue of this Act by notice of title or otherwise, or to deduce title, this Act shall be deemed to be, and may be used as, a general disposition, conveyance or, as the case may be, assignation of such property in favour of A/S:
- (d) For the reference in subsection (2) of section 10 (Evidence: books and documents) of this Act to section 10 of the Civil Evidence Act 1968 there shall be substituted reference to section 17 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.

(3) In the application of this Act to Northern Ireland—

- (a) for the reference in subsection (2) of section 10 (Evidence: books and documents) of this Act to section 10 of the Civil Evidence Act 1968 there shall be substituted reference to section 6 of the Civil Evidence Act (Northern Ireland) 1971;
- (b) the reference in subsection (2) of section 12 (Evidence of transfer and vesting) of this Act to the Stock Transfer Act 1963 shall include a reference to the Stock Transfer Act (Northern Ireland) 1963;
- (c) for the reference in subsection (7) of section 12 (Evidence of transfer and vesting) of this Act to the Law of Property Act 1925 there shall be substituted reference to the Conveyancing Act 1881; and
- (d) for paragraph (a) of section 13 (Transfer and vesting of interest in land) of this Act, there shall be substituted the following:—
  - “(a) constitute a purchase or creation of an estate for the purposes of section 10 (3) of the Business Tenancies Act (Northern Ireland) 1964; or”.