



# Hill Samuel Bank and United Dominions Trust Act 1994

## 1994 CHAPTER xiv

### 1 Short title

This Act may be cited as the Hill Samuel Bank and United Dominions Trust Act 1994.

### 2 Interpretation

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

“appointed day” in relation to a transfer scheme means such day as may be specified under section 3 (2) of this Act as the appointed day for the scheme;

“customer” includes any person having a bank account or other dealing, transaction, agreement or arrangement with Hill Samuel or UDT;

“document” has the same meaning as in section 10 of the Civil Evidence Act 1968;

“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;

“existing” means existing, outstanding or in force immediately before the appointed day for a transfer scheme;

“the first appointed day” means the earliest day which is the appointed day for any transfer scheme;

“Hill Samuel” means Hill Samuel Bank Limited;

“liabilities” includes duties and obligations of every description;

“property” means property and assets of every description including property and assets held on trust or in a fiduciary capacity and 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, flawed asset arrangement, undertaking or other means of securing payment or discharge of a debt or liability;

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“transfer scheme” means a scheme made under section 3 (Schemes for transfer to TSB of property, liabilities, trusteeships and other appointments) of this Act;

“trustee” includes a trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will; executor of the will, or administrator of the estate, of a deceased person; judicial trustee appointed by order of any court; attorney for another person; or any other person acting in a fiduciary capacity;

“TSB” means TSB Bank plc;

“UDT” means United Dominions Trust Limited; and

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

- (2) Any reference in this Act to property or liabilities of Hill Samuel or UDT is a reference to property or liabilities wherever such property or liabilities are situated or arise and whether or not capable of being transferred or assigned by Hill Samuel or UDT and whether it 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 Schemes for transfer to TSB of property, liabilities, trusteeships and other appointments**

- (1) Within five years from the passing of this Act TSB may jointly with Hill Samuel or jointly with UDT make a scheme or schemes for—
- (a) the transfer to TSB of any of the property and liabilities to which, immediately before the appointed day for any such scheme, Hill Samuel or UDT (as the case may be) is entitled or subject and which are not rights or liabilities relating to a person’s employment;
  - (b) the substitution of TSB for Hill Samuel or UDT or of a director, officer, representative or employee of TSB for a director, officer, representative or employee of Hill Samuel or UDT (as the case may be), in any position held by it or by such person as a trustee; and
  - (c) the substitution of TSB for Hill Samuel or UDT, or of a director, officer, representative or employee of TSB for a director, officer, representative or employee of Hill Samuel or UDT (as the case may be), as the holder of any office or appointment other than of trustee.
- (2) Transfers by a transfer scheme or the substitution of TSB for Hill Samuel or UDT or of a director, officer, representative or employee of TSB for a director, officer, representative or employee of Hill Samuel or UDT (as the case may be) under subsection (1) above shall take effect on such day as may be specified in the scheme as the appointed day for the scheme; and before the first appointed day TSB shall publish in the London Gazette, the Edinburgh Gazette and the Belfast Gazette notice of the earliest day which is the appointed day for any transfer scheme stating that it is the first appointed day under this Act.
- (3) Not less than seven days before the appointed day for a transfer scheme Hill Samuel or UDT (as the case may be) shall notify by post every person having a bank account which is to be transferred by or in consequence of the scheme (or, in the case of a joint account, the first-named account holder) that the account is to become an account with TSB and of the appointed day for the scheme:

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Provided that a failure by Hill Samuel or UDT so to notify an account holder shall not invalidate the scheme.

- (4) On the appointed day for a transfer scheme any property and liabilities transferred by the scheme shall, by virtue of this Act and without further assurance, be transferred to and vested in TSB to the intent that TSB shall succeed to such property and liabilities as if for all purposes TSB were the same person in law as Hill Samuel or UDT as the case may be.
- (5) Where the transfer of any property or liability to which a transfer scheme relates is governed by the law of any country or territory outside the United Kingdom, Hill Samuel or UDT, as the case may be, shall, if TSB so requires, take all necessary steps to secure that the transfer of the property or liability to TSB is fully effective under the law of that country or territory and pending such transfer any such property shall be held by Hill Samuel or UDT (as the case may be) in trust for TSB and TSB shall be liable to Hill Samuel or UDT (as the case may be) for any such liability.

#### **4 Provisions as to trust and other property and liabilities**

- (1) Where a transfer scheme transfers to TSB property or a liability to which immediately before the appointed day for the scheme Hill Samuel or UDT was then entitled or subject as a trustee or as the holder of any other office or appointment, whether alone or jointly with another person, it shall be held by TSB, or TSB shall be subject to it, on and from the appointed day, alone or, as the case may be, jointly with that other person, in that capacity upon the same trusts or terms and with and subject to the same powers and provisions as were applicable theretofore.
- (2) Where TSB is substituted for Hill Samuel or UDT as a trustee or as the holder of any other office or appointment under paragraph (b) or (c) of section 3 (1) above—
  - (a) any property to which Hill Samuel or UDT was then in that capacity entitled, whether alone or jointly with another person, shall, by virtue of this Act and without further assurance, be transferred to and held by TSB alone or, as the case may be, jointly with that other person, upon the same trusts or terms and with and subject to the same powers, provisions and liabilities as were applicable theretofore; and
  - (b) TSB shall, by virtue of this Act and without further assurance, in the same capacity and upon the same terms, become subject to any liability to which Hill Samuel or UDT was then in that capacity subject, whether alone or jointly with another person.
- (3) Where a director, officer, representative or employee of TSB is substituted for a director, officer, representative or employee of Hill Samuel or UDT as a trustee or as the holder of any other office or appointment under paragraph (b) or (c) of section 3 (1) above—
  - (a) any property to which that director, officer, representative or employee of Hill Samuel or UDT was then, as trustee or as the holder of that office or appointment, entitled, whether alone or jointly with another person, shall, by virtue of this Act and without further assurance, be transferred to and held by that director, officer, representative or employee of TSB alone or, as the case may be, jointly with that other person upon the same trusts or terms and with and subject to the same powers, provisions and liabilities as were applicable theretofore; and

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- (b) that director, officer, representative or employee of TSB shall, by virtue of this Act and without further assurance, as trustee or as the holder of the office or appointment aforesaid, and upon the same terms, become subject to any liability to which the director, officer, representative or employee of Hill Samuel or UDT whom he is replacing was then, as trustee or as the holder of that office or appointment, subject, whether alone or jointly with another person.
- (4) Any instrument or order of any court under or by virtue of which any property has been or is to become vested in Hill Samuel or UDT as a trustee or as the holder of any other office or appointment, and any provision therein, or any agreement or arrangement for the payment to, or retention by, Hill Samuel or UDT of remuneration for its services as a trustee or as the holder of any other office or appointment, shall, if that property is transferred by or in consequence of a transfer scheme, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to Hill Samuel or UDT, other than a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, Hill Samuel or UDT, there were substituted a reference to TSB.

## 5 Supplementary provisions as to schemes and transfers

- (1) 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 a transfer scheme and any property or liability transferred by or in consequence of a transfer scheme.
- (2) A transfer scheme may—
- (a) contain supplementary and incidental provisions for the purpose of giving full effect to the transfer by or in consequence of the scheme of property and liabilities and to the substitution of TSB for Hill Samuel or UDT under paragraph (b) or (c) of section 3 (1) above; and
  - (b) revoke or vary any provision of an earlier transfer scheme before the appointed day for that scheme.
- (3) An agreement, transaction, or other thing (not contained in an enactment and not being a will) which has been made, effected or done by, to or in relation to, or with reference to, Hill Samuel or UDT and which—
- (a) immediately before the appointed day for a transfer scheme is in force or effective; and
  - (b) relates to any property or liability to be transferred to TSB by or in consequence of the scheme or to any position in respect of which TSB is substituted for Hill Samuel or UDT under paragraph (b) or (c) of section 3 (1) above,
- shall on and after that day have effect as if made, effected or done by, to or in relation to, or with reference to, TSB.
- (4) Where any agreement, transaction or other thing has effect in accordance with subsection (3) above—
- (a) any reference to Hill Samuel or UDT in any document incorporating or otherwise connected with the agreement, transaction or other thing shall on and after the appointed day for the transfer scheme be construed as a reference to TSB; and

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- (b) any reference (however worded and whether express or implied) in the agreement, transaction or other thing to the directors, officers, representatives or employees (or to any director, officer, representative or employee) of Hill Samuel or UDT shall on and after the appointed day for the transfer scheme be construed as a reference to the directors, officers, representatives or employees of TSB or, as the case may require, to such director, officer, representative or employee of TSB, as TSB may nominate for that purpose or, in default of nomination, to the director, officer, representative or employee of TSB who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee.
- (5) Any agreement or transaction which relates to property or liabilities which are only partly transferred to TSB by or in consequence of a transfer scheme shall be construed as if the agreement or transaction, to the extent to which it is enforceable by and against Hill Samuel or UDT, constituted two separate agreements or transactions, one of which is enforceable by and against TSB as regards the part of the property or, as the case may be, liabilities so transferred to it and not as regards the other part, and the other of which is enforceable by and against Hill Samuel or UDT as regards the part of the property or, as the case may be, liabilities not so transferred to TSB and not as regards the other part.
- (6) Any account between Hill Samuel or UDT and a customer which is transferred by or in consequence of a transfer scheme shall be deemed for all purposes to be a single continuing account and, subject to the provisions of subsections (3) and (4) above and subsections (7) and (8) below, shall be subject to the same terms and conditions as those which applied before the transfer.
- (7) Nothing in subsection (6) above shall preclude the exercise of any right of TSB (in place of Hill Samuel or UDT) or of a customer to vary the terms and conditions subject to which the account of the customer is kept.
- (8) Without prejudice to the generality of the foregoing, where by virtue of a transfer scheme and the operation of this Act TSB becomes a party to an agreement, transaction or other thing in place of Hill Samuel or UDT, any reference in that agreement, transaction or other thing to a rate of interest prescribed by Hill Samuel or UDT shall be construed on and from the appointed day for the scheme as a reference to the equivalent rate of interest prescribed by TSB.
- (9) Any negotiable instrument, letter of credit or order for payment of money which is transferred by a transfer scheme and has been drawn on, or given to, or accepted or endorsed by, Hill Samuel or UDT, or is payable at a place of business of Hill Samuel or UDT, shall have the same effect as if it had been drawn on, or given to, or accepted or endorsed by, TSB or were payable at a place of business of TSB.
- (10) The custody of any document or record, goods or other thing held by Hill Samuel or UDT as bailee in connection with any property or liabilities to be transferred by a transfer scheme shall pass to TSB on the appointed day for the scheme, and the rights and obligations of Hill Samuel or UDT under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of TSB.
- (11) (a) Any security held immediately before the appointed day for a transfer scheme by Hill Samuel or UDT in connection with any property or liabilities to be transferred by or in consequence of the scheme, or by a nominee or agent of or trustee for Hill Samuel or UDT, shall, on and from that day, be held by,

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- or as the case may require, by that nominee, agent or trustee for, TSB and be available to TSB (whether for its own benefit or, as the case may be, for the benefit of any other person);
- (b) In relation to any security transferred to TSB by or in consequence of a transfer scheme and to any liabilities thereby secured, TSB shall be entitled to the same rights and priorities and be subject to the same obligations as those to which Hill Samuel or UDT would have been entitled or subject if it had continued to hold the security;
- (c) Without prejudice to the generality of paragraph (b) above, in any case where any existing liability subsists between Hill Samuel or UDT and TSB in respect of which Hill Samuel or UDT or TSB, or a nominee or agent of or trustee for Hill Samuel or UDT or TSB, holds security, that liability shall, for the purpose of enforcing or realising that security, be deemed to continue in effect notwithstanding a transfer to TSB of the liability or the benefit of the liability by or in consequence of a transfer scheme;
- (d) Any security referred to in the foregoing provisions of this subsection which extends to future advances, liabilities or indebtedness shall, on and from the appointed day for the transfer scheme, be available to TSB (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, liabilities and indebtedness to the same extent and in the same manner in all respects as it extends to future advances, liabilities or indebtedness immediately before that day.
- (12) On and from the appointed day for a transfer scheme, TSB and all other persons shall 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 the property or liability transferred by or in consequence of the scheme as if it had been property or a liability of TSB for the period before the appointed day for the scheme during which it had been the property or a liability of Hill Samuel or UDT; and any legal proceedings or applications to any authority pending immediately before the appointed day for the scheme by or against Hill Samuel or UDT may be continued by or against TSB.
- (13) Any judgment, order or award obtained by or against Hill Samuel or UDT relating to property or a liability transferred by or in consequence of a transfer scheme or to any position in respect of which TSB is substituted for Hill Samuel or UDT under paragraph (b) or (c) of section 3 (1) above and not fully satisfied before the appointed day for the scheme shall on and from that day, to the extent to which it was enforceable by or against Hill Samuel or UDT immediately before that day, be enforceable by or against TSB and no longer by or against Hill Samuel or UDT.
- (14) In respect of—
- (a) any data transferred to TSB by a transfer scheme, or
- (b) any data relating to any property or a liability transferred to TSB by or in consequence of a transfer scheme, the Data Protection Registrar may, on and from the appointed day for that transfer scheme, serve on TSB any notice under section 10 of the Data Protection Act 1984 which he could have served on Hill Samuel or UDT in respect of a breach of the data protection principles by Hill Samuel or UDT before that appointed day; but the transfer of property or liabilities to TSB by or in consequence of a transfer scheme and any disclosure to TSB of any information in contemplation or as a result thereof shall not amount to a breach of any duty of confidentiality to which Hill

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Samuel or UDT is or was subject immediately before the appointed day for the scheme or to a contravention by TSB or Hill Samuel or UDT of the data protection principles.

## **6 Evidence: books and documents**

All books and other documents which would, before the appointed day for a transfer scheme, have been evidence for or against Hill Samuel or UDT in respect of any matter to which the scheme relates shall be admissible in evidence in respect of the same matter for or against TSB.

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

- (1) In this section “books” shall be construed in accordance with section 9 (2) of the Bankers' Books Evidence Act 1879.
- (2) On and from the appointed day for a transfer scheme the said Act of 1879 shall apply to those books of Hill Samuel or UDT which are transferred to TSB by the scheme, and to entries made in those books before that day, as if such books were the books of TSB.
- (3) For the purposes of section 4 of the said Act of 1879, books so transferred to TSB shall be deemed to have been the ordinary books of TSB at the time of the making of any entry therein which purports to have been made before the appointed day for the scheme, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

## **8 Evidence of transfer and vesting**

- (1) In this section “convey” has the same meaning as in the Law of Property Act 1925.
- (2) A certificate issued jointly by or on behalf of TSB and Hill Samuel or UDT that by or in consequence of a transfer scheme any property or liabilities specified in the certificate have been transferred to TSB shall be conclusive evidence for all purposes of that fact.
- (3) A certificate issued under subsection (2) above, shall, in relation to any registered securities within the meaning of the Stock Transfer Act 1963 transferred to TSB by or in consequence of a transfer scheme, 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 Hill Samuel or UDT to TSB.
- (4) Without prejudice to subsection (2) above (but subject to that subsection)—
  - (a) any document made or executed on or after the first appointed day whereby TSB, 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 Hill Samuel or UDT immediately before that day, whether alone or jointly with any other person, shall be sufficient evidence that the interest of Hill Samuel or UDT in that property has been transferred to TSB by or in consequence of a transfer scheme; and
  - (b) where there is any other transaction by TSB on or after the first appointed day in connection with, or in relation to, any property or liability which immediately before that day is property or a liability of Hill Samuel or UDT, it shall be deemed in favour of any other party to the transaction, or any person

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claiming through or under him, that TSB has full power and authority for that transaction.

- (5) Without prejudice to subsection (2) above (but subject to that subsection)—
- (a) any document made or executed on or after the first appointed day whereby Hill Samuel or UDT, 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 that day, whether alone or jointly with any other person, shall be sufficient evidence that its interest in that property has not been transferred to TSB by or in consequence of a transfer scheme; and
  - (b) where there is any other transaction by Hill Samuel or UDT on or after the first appointed day in connection with, or in relation to, any property or liability which immediately before that day is, or would but for this Act or a transfer scheme be, property or a liability of Hill Samuel or UDT, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that Hill Samuel or UDT, as the case may be, has full power and authority for that transaction.
- (6) No person may rely upon the provisions of subsection (4) or (5) above if he has knowledge to the contrary and nothing in this section affects the liability of TSB, or of Hill Samuel or UDT, to the other of them in respect of anything done, or purported to have been done, by one of them in connection with, or in relation to, any property or liabilities transferred by or in consequence of a transfer scheme.

## **9 Savings in respect of transfers of property**

The transfer of any property or of a liability by or in consequence of a transfer scheme or the substitution of TSB for Hill Samuel or UDT under paragraph (b) or (c) of section 3 (1) above shall not—

- (1) constitute a purchase or creation of an interest in land for the purposes of section 30 (2) of the Landlord and Tenant Act 1954 or constitute a relevant disposal within the meaning of section 4 of the Landlord and Tenant Act 1987 for the purposes of that Act; or
- (2) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of property or of an interest in property for the purposes of any provision in any instrument, contract (whether in writing or not) or order of any court concerning that property or that interest; or
- (3) give rise to any forfeiture; or
- (4) invalidate or discharge any agreement, transaction, security or other thing; or
- (5) require further registration in respect of any security transferred by or in consequence of the scheme; or
- (6) cause the benefit of any agreement, licence or privilege enjoyed by Hill Samuel or UDT to be lost or surrendered or otherwise affected, or require the disposal by Hill Samuel or UDT of any interest, otherwise than as provided for in this Act; or
- (7) relieve any person under an obligation to Hill Samuel or UDT of a corresponding obligation to TSB; or



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- (8) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any agreement or arrangement to which TSB, Hill Samuel or UDT is a party; or
- (9) operate so as to merge any leasehold interest in the reversion expectant on it.

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

(1) 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;
  - “convey” includes the execution of any deed or other instrument or document by which any property, or any estate, interest, security or other right in or over property, is constituted, completed, disposed, assigned, transmitted or discharged;
  - “debenture” includes a floating charge or any instrument containing a floating charge;
  - “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 whether or not constituted in respect of a heritable property; 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 Hill Samuel or UDT transferred to TSB by or in consequence of a transfer scheme shall, on and from the appointed day for the scheme, have the same effect in favour of TSB up to the maximum amounts stated therein respectively in all respects as if they had been originally granted in favour of TSB for such maximum amounts;
- (c) to enable TSB to complete a title, if thought fit, to any property transferred to it by or in consequence of a transfer scheme, by notice of title or otherwise, or to deduce title, the transfer scheme 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 TSB;
- (d) for the reference in subsection (1) of section 2 (Interpretation) 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.

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

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- (a) for the reference in subsection (1) of section 2 (Interpretation) 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) for the reference in subsection (1) of section 8 (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;
- (c) the reference in subsection (3) of section 8 (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; and
- (d) for paragraph (1) of section 9 (Savings in respect of transfers of property) of this Act, there shall be substituted the following:—

“(1) constitute a purchase or creation of an estate for the purposes of section 10 (3) of the Business Tenancies Act (Northern Ireland) 1964; or”.

## 11 Costs of Act

All costs, charges and expenses preliminary to, and of and incidental to, the preparing for, obtaining and passing of this Act, or otherwise in relation thereto, shall be paid by TSB.