



Hill Samuel Bank and United Dominions Trust Act 1994

1994 CHAPTER xiv

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

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and after the appointed day for the transfer scheme be construed as a reference to TSB; and

- (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

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- 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, 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

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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 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.