



# HFC Bank Act 1999

## 1999 CHAPTER iv

### 6 Supplementary provisions as to transfer

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) Subject to paragraph (2) below, every existing contract to which Beneficial is a party (whether in writing or not) shall be construed and have effect on and from the appointed day—
  - (a) as if HFC had been a party thereto instead of Beneficial;
  - (b) subject to paragraph (4) below, as if for any reference (however worded and whether express or implied) to Beneficial there were substituted, as respects anything falling to be done on or after the appointed day, a reference to HFC; and
  - (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 Beneficial were, as respects anything falling to be done on or after the appointed day, a reference to the directors, officers, representatives or employees of HFC as the case may require, or to such director, officer, representative or employee of HFC as HFC may nominate for that purpose or, in default of nomination, to the director, officer, representative or employee of HFC who corresponds as nearly as may be to the first mentioned director, officer, representative or employee:
- (2) No director, secretary or auditor of Beneficial shall by virtue only of this Act become a director, secretary or auditor of HFC and paragraph (1) above shall not apply to any contract between Beneficial and a director, secretary or auditor of Beneficial for his services as such:
- (3) Sub-paragraphs (b) and (c) of paragraph (1) above shall, on and from the appointed day, apply to any enactment other than the provisions of this Act and to any provision of any existing contract to which Beneficial was not a party; and sub-paragraphs (a), (b) and (c) of that paragraph shall, on and from the appointed day, 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:

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- (4) Sub-paragraph (b) of paragraph (1) above shall not apply to the name or title of any rate, charge, tariff, scale of fees, terms or conditions of Beneficial which includes the initials, the name or part of the name of Beneficial, but on or after the appointed day HFC may change the name or title:
- (5) An offer or invitation to treat made to or by Beneficial before the appointed day shall be construed and have effect on and after the appointed day as an offer or invitation to treat, as the case may be, made to or by HFC:
- (6) Any account between Beneficial and a customer shall, on and from the appointed day, become an account between HFC 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:

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

- (7) For the purpose of construing and giving effect to any contract which—
  - (a) has effect or continues to have effect on, or on and after, the appointed day; and
  - (b) makes reference to a rate, charge, tariff or scale of fees or to terms or conditions published, determined or ascertained from time to time by Beneficial,

HFC shall have the same right under that contract as Beneficial had to publish, determine, ascertain, vary or amend rates, charges, tariffs, scales of fees, terms or conditions, and any such rates, charges, tariffs, scales of fees, terms or conditions published, determined, ascertained, varied or amended by HFC shall apply in place of those which could have been published, determined, ascertained, varied or amended by Beneficial:

- (8) Any existing instruction, order, direction, mandate, power of attorney, authority, commitment, licence, permission or consent given to or by Beneficial (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 or, as the case may be, by HFC:
- (9) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, Beneficial, or payable at any place of business of Beneficial, 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, HFC, or were payable at the same place of business of HFC:
- (10) The custody of any document or record, goods or other thing held by Beneficial as bailee shall pass to HFC on the appointed day, and the rights and obligations of Beneficial under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of HFC:
- (11) (a) Any security interest held or utilised immediately before the appointed day by or on behalf of Beneficial or by a nominee or agent of or trustee for Beneficial, as security for the payment or discharge of any liability, shall, on and from the appointed day, be held or utilised by, or as the case may require, by that nominee, agent of or trustee for, HFC and be available to HFC (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;

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- (b) In relation to any security interest transferred to HFC by or under this Act and any liabilities thereby secured, HFC shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which Beneficial would have been entitled or subject if it had continued to hold or utilise the security interest;
  - (c) Without prejudice to the generality of sub-paragraph (b) above, in any case where any existing liability subsists between Beneficial and HFC in respect of which Beneficial or HFC, or a nominee or agent of or trustee for Beneficial or HFC, holds or utilises a security interest, that liability shall, for the purpose of enforcing or realising that security interest, be deemed to continue in effect notwithstanding the transfer to HFC of the undertaking or any part thereof;
  - (d) Any security interest 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 HFC (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 it extends immediately before that day to future advances or liabilities:
- (12) Where by virtue of this Act any property or liability of Beneficial becomes property or a liability of HFC, HFC 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 HFC:
- (13) Any right of action and any remedy available in consequence thereof which accrues, arises or becomes enforceable or available before the appointed day by or against Beneficial, or which would, but for this Act, accrue, arise or become enforceable or available by or against Beneficial on or after the appointed day, may be enforced or availed of by or against HFC on or after the appointed day and any legal proceedings, applications to any authority or other proceedings for the resolution of a dispute pending or current immediately before the appointed day by or against Beneficial may be continued by or against HFC:
- (14) Any judgment, order or award obtained by or against Beneficial and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against Beneficial, become enforceable by or against HFC:
- (15) The Data Protection Commissioner may, on and from the appointed day, serve on HFC any notice under section 40 of the Act of 1998 which he could have served on Beneficial in respect of a breach by Beneficial of the data protection principles; but the transfer to HFC by this Act of the undertaking (and any disclosure to HFC of any information in contemplation or as a result thereof) shall not amount to a breach of any duty of confidentiality to which Beneficial is subject at the date of such disclosure or to a contravention by HFC or Beneficial of the data protection principles.
- (16) On and from the appointed day—
- (a) if section 6 of the Act of 1998 shall not have come into force, the reference in paragraph (15) above to the Data Protection Commissioner shall have effect as a reference to the Data Protection Registrar; and
  - (b) if section 40 of the Act of 1998 shall not have come into force, the reference in paragraph (15) above to that section shall have effect as a reference to section 10 of the Data Protection Act 1984.