



HSBC Investment Banking Act 2002

2002 CHAPTER iii

7 Supplementary provisions as to transfer

- (1) Without prejudice to the generality of the foregoing provisions of this Act but subject to any provision of this Act to the contrary, the following provisions shall have effect in relation to the undertaking.
- (2) Every existing contract to which HSBC Investment Bank is a party shall be construed and have effect on and from the appointed day—
 - (a) as if the relevant successor bank were a party thereto instead of HSBC Investment Bank;
 - (b) subject to subsection (5) below, as if for any reference (however worded and whether express or implied) to HSBC Investment Bank there were substituted a reference to the relevant successor bank;
 - (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 HSBC Investment Bank were a reference (as the case may require)—
 - (i) to the directors, officers, representatives or employees of the relevant successor bank, or
 - (ii) to such director, officer, representative or employee of the relevant successor bank as the relevant successor bank may nominate for that purpose, or
 - (iii) in default of nomination, to the director, officer, representative or employee of the relevant successor bank 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, the relevant successor bank by virtue of this Act, as if the contract, to the extent to which it is enforceable by and against HSBC Investment Bank, constituted two separate contracts—
 - (i) one of which is enforceable by and against the relevant successor bank only as regards the part of the property or, as the case may be,

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- liabilities so transferred to, and vested in, the relevant successor bank, and
- (ii) the other of which is enforceable by and against HSBC Investment Bank only as regards the part of the property or, as the case may be, liabilities not so transferred to, and vested in, the relevant successor bank.
- (3) Paragraphs (b) and (c) of subsection (2) 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 HSBC Investment Bank was not a party on the appointed day as they apply to a contract to which that subsection applies.
- (4) Paragraphs (a), (b) and (c) of subsection (2) above 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 that subsection applies.
- (5) Paragraph (b) of subsection (2) above shall not apply to the name or title of any rate, charge, tariff, scale of fees, terms or conditions of HSBC Investment Bank which includes the initials, the name or part of the name of HSBC Investment Bank, but on or after the appointed day the relevant successor bank may change the name or title.
- (6) An offer or invitation to treat made to or by HSBC Investment Bank 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 the relevant successor bank.
- (7) Any account between HSBC Investment Bank and a customer shall, on and from the appointed day, become an account between the relevant successor bank 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 the relevant successor bank or of the customer to vary the conditions or incidents subject to which any account is kept.
- (8) For the purpose of construing and giving effect to any existing 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 HSBC Investment Bank,
- the relevant successor bank shall have the same right under that contract as HSBC Investment Bank 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 the relevant successor bank shall apply in place of those which could have been published, determined, ascertained, varied or amended by HSBC Investment Bank.
- (9) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to or by HSBC Investment Bank (whether in writing or not) shall have effect, on and from the appointed day, as if given to or, as the case may be, by the relevant successor bank.
- (10) Any negotiable instrument, cheque, warrant, draft, letter of credit or order for payment of money drawn on or by, or given to, or accepted or endorsed by, HSBC Investment Bank, or payable at any place of business of HSBC Investment Bank, whether so

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

drawn, given, accepted, endorsed or payable before, on or after the appointed day, shall have the same effect, on and from the appointed day—

- (a) as if it had been drawn on or by, or given to, or accepted or endorsed by, the relevant successor bank; and
 - (b) if relevant, as if the place of business at which it is payable were a place of business of the relevant successor bank.
- (11) Any document, claim or demand addressed after the appointed day to HSBC Investment Bank pursuant to an existing contract shall be deemed to have been addressed to the relevant successor bank.
- (12) The custody of any document, goods or other thing held by HSBC Investment Bank as bailee shall pass to the relevant successor bank on the appointed day, and the rights and obligations of HSBC Investment Bank under any contract of bailment relating to any such document, goods or thing shall on that day become rights and obligations of the relevant successor bank.
- (13) Any security interest held immediately before the appointed day by or on behalf of HSBC Investment Bank as security for the payment or discharge of any debt or liability shall, on and from the appointed day, be held by or on behalf of the relevant successor bank and be available to the relevant successor bank (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 debt or liability.
- (14) In relation to any security interest transferred to, and vested in, a successor bank by or under this Act and any liabilities thereby secured, the relevant successor bank shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which HSBC Investment Bank would have been entitled or subject if it had continued to hold the security interest.
- (15) Without prejudice to the generality of subsection (14) above, in any case where any existing liability subsists between HSBC Investment Bank and a successor bank in respect of which—
- (a) HSBC Investment Bank or the relevant successor bank, or
 - (b) a nominee or agent of or trustee for HSBC Investment Bank or the relevant successor bank,
- holds 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, and vesting in, the relevant successor bank of the undertaking or any part thereof.
- (16) Any security interest referred to in subsections (13) to (15) above which extends to future advances or liabilities shall, on and from the appointed day, be available to the relevant successor bank (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 or liabilities to the same extent and in the same manner in all respects as it was available to HSBC Investment Bank immediately before that day as security for the payment or discharge of future advances or liabilities.
- (17) Where by virtue of this Act any property or liability of HSBC Investment Bank becomes property or a liability of a successor bank, the relevant successor bank 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,

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

perfecting or enforcing that property or liability as if it had at all times been property or a liability of the relevant successor bank.

- (18) Any right of action and any remedy available in consequence thereof—
- (a) which accrues, arises or becomes enforceable or available before the appointed day by or against HSBC Investment Bank, or
 - (b) which would, but for this Act, accrue, arise or become enforceable or available by or against HSBC Investment Bank after the appointed day,
- may to the same extent be enforced or availed of by or against the relevant successor bank after the appointed day.
- (19) 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 HSBC Investment Bank may be continued by or against the relevant successor bank.
- (20) Any judgment, order or award obtained by or against HSBC Investment Bank and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against HSBC Investment Bank, become enforceable by or against the relevant successor bank.
- (21) On the appointed day the relevant successor bank shall—
- (a) succeed to all the rights, liabilities and obligations of HSBC Investment Bank in respect of data which is comprised in that part of the undertaking transferred to it and which is subject to the Data Protection Act 1998 (c. 29);
 - (b) become the data controller of any data which is comprised in that part of the undertaking transferred to it and which is subject to the Data Protection Act 1998 in place of HSBC Investment Bank, and shall be deemed to have been the data controller of all such data at all material times when data was processed; and
 - (c) be under the same duty by virtue of any law as HSBC Investment Bank was under to respect the confidentiality and privacy of any person and shall be bound by any specific notice given or request made by the data subject which was binding on HSBC Investment Bank and which required HSBC Investment Bank not to use data for marketing purposes.
- (22) In any consent given by a data subject in respect of such data as is mentioned in subsection (21) above, any reference to HSBC Investment Bank (or to any subsidiary or holding company of HSBC Investment Bank or any subsidiary of such a holding company) shall be deemed to include a reference to the relevant successor bank and any subsidiary or holding company of the relevant successor bank and any subsidiary of such a holding company.