



# 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 adeemed 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: