ELIZABETH II



1970 CHAPTER xxvi

An Act to provide for the transfer to Hambros Limited of the banking business of Hambros Bank, Limited; and for other purposes. [29th May 1970]

WHEREAS Hambros Bank, Limited (hereafter referred to as "the Existing Bank") is a company limited by shares within the meaning of the Companies Act 1948 and has an authorised capital of £9,500,000: 1948 c. 38.

And whereas part of the business of the Existing Bank is the business of banking:

And whereas Hambros Limited (hereafter called "the New Bank") is also a company limited by shares within the meaning of the said Act of 1948 having been incorporated with an authorised capital of £100 as a wholly-owned subsidiary of the Existing Bank and with a view to the acquisition of its banking business:

And whereas it is expedient that the said business should be transferred as provided in this Act and that the other provisions contained in this Act should be enacted:

And whereas the purposes of this Act cannot be effected 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:—

Short title.

1. This Act may be cited as the Hambros Bank Act 1970.

Interpretation.

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

" the appointed day " means such day as may be appointed under section 3 (Appointed day) of this Act;

" the banking business " means the assets, rights, liabilities, obligations and duties of the Existing Bank specified in the Schedule to this Act as existing immediately before the appointed day;

" customer " means any person who has a banking account or other dealing, transaction or arrangement with the Existing Bank or the New Bank (as the case may be);

" enactment " includes an enactment in this Act or in any general or local Act and any order, byelaw, rule or regulation made under any Act;

" existing " means existing or (as the case may be) in force immediately before the appointed day;

" the Existing Bank " means Hambros Bank, Limited as existing;

" the New Bank " means the company incorporated with the name of Hambros Limited and with a view to the acquisition of the banking business;

" security " means any property or instrument for securing the payment or satisfaction of a debt (whether present or future) or the discharge of an obligation or liability (whether actual or contingent) and (without prejudice to the generality of the foregoing words) includes a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, trust receipt, warehouse warrant, guarantee, hypothecation, lien or pledge;

" the subordinated stock " means the £4,200,000 7 per cent. Subordinated Unsecured Loan Stock 1986/91 of the Existing Bank;

" the subscription rights " means the rights of the holders of the subordinated stock to subscribe for shares of the Existing Bank;

" the trust deed " means the trust deed dated the 18th July, 1966, and made between the Existing Bank and Phoenix Assurance Company, Limited for the purpose of constituting the subordinated stock.

(2) Any reference in this Act to any enactment shall be construed as a reference to that enactment as applied, extended or amended by or by virtue of any subsequent enactment including any provisions of this Act.

Appointed day.

3.—(1) The directors of the Existing Bank may appoint a day for the purposes of this Act but such a day shall not be so appointed unless and until the following conditions have been fulfilled, that is to say:—

(*a*) the Existing Bank has resolved to change its name to Hambros Limited;

(*b*) with a view to the acquisition of the banking business the New Bank has increased its share capital to £10,000,000 divided into 10,000,000 ordinary shares of £1 each; and

(*c*) the New Bank has resolved to change its name to Hambros Bank Limited.

(2) The Existing Bank shall publish in the London Gazette a notice stating the day appointed for the purposes of this Act.

Transfer of banking business.

4.—(1) On the appointed day the banking business shall by virtue of this Act be transferred to and vest in the New Bank.

(2) As consideration for the said transfer the New Bank shall—

(*a*) forthwith after the appointed day allot to the Existing Bank or its nominees 10,000,000 ordinary shares of £1 each in the capital of the New Bank credited as fully paid; and

(*b*) pay, satisfy and discharge the existing obligations and liabilities of the Existing Bank in so far as they relate to the banking business.

(3) A copy of this Act printed by the Queen's Printer shall on and after the appointed day be conclusive evidence in all courts and proceedings of the transfer of the banking business to and of its vesting in the New Bank; and any such copy of this Act shall, in relation to any registered securities (within the meaning of the Stock Transfer Act 1963) which on the appointed day are fully paid up and comprised in the banking business and transferred to or vested in the New Bank by virtue of this Act, have effect for the purposes of the said Act of 1963 as if it were a duly executed stock transfer in respect of the transfer of such securities from the Existing Bank to the New Bank.

1963 c. 18.

(4) Subject to the provisions of section 8 (Rights under foreign securities) of this Act if any part of the banking business cannot be vested in the New Bank by virtue of this Act because transfers of that part are not governed by the law of a part of the United Kingdom the Existing Bank shall so soon as is practicable after the appointed day take all steps requisite for the effectual transfer thereof to the New Bank and pending such transfer shall hold the same in trust for the New Bank.

(5) For the avoidance of doubt it is hereby declared that the transfer of an interest in land by virtue of this Act shall not constitute an assignment, transfer, devolution, parting with possession or other disposition contained in any instrument concerning that interest.

Application of Act to sub-ordinated stock.

5. Nothing contained in this Act or done in pursuance of any provision of this Act shall be deemed to constitute a breach by the Existing Bank of any obligation imposed on it by the trust deed or a variation of the rights attached to the subordinated stock.

Saving of contracts, etc.

6.—(1) All conveyances, deeds, leases, licences and other instruments or undertakings entered into by or made with or addressed to the Existing Bank (whether alone or with any other person) with reference (either wholly or in part) to the banking business before the appointed day and in force on that day shall as from that day be binding and of full force and effect in every respect against or in favour of the New Bank as fully and effectually as if, instead of the Existing Bank, the New Bank had been a party thereto or bound thereby or entitled to the benefit thereof.

(2) Every existing contract (whether in writing or not) to which the Existing Bank was a party and which relates, either wholly or in part, to the banking business, shall as from the appointed day be construed and have effect as if—

(*a*) the New Bank had been a party thereto instead of the Existing Bank;

(*b*) for any reference (however worded and whether express or implied) to the Existing Bank there were substituted, as respects anything falling to be done on or after the appointed day in relation to the banking business, a reference to the New Bank; and

(*c*) any reference (however worded and whether express or implied) to the directors or to any director, officer, clerk

or servant of the Existing Bank were, as respects anything falling to be done on or after the appointed day in relation to the banking business, a reference (as the case may require) to the directors of the New Bank or to such director, officer, clerk or servant of the New Bank as the New Bank may appoint or, in default of appointment, to the director, officer, clerk or servant of the New Bank who most nearly corresponds to the first-mentioned director, officer, clerk or servant.

(3) In relation to every contract of employment to which subsection (2) of this section applies, the provisions of the said subsection shall have effect so as immediately before the appointed day to substitute the New Bank for the Existing Bank but not so as to constitute a termination of such contract for the purposes of the Redundancy Payments Act 1965. 1965 c. 62.

(4) Every mandate or other instruction in force on the appointed day for the payment of any interest, dividends or other periodical sums to or by the Existing Bank in connection with the banking business shall as from that day have effect unless and until revoked as a mandate or instruction for the like payment to or by the New Bank.

Banking business.

7. Without prejudice to the generality of the foregoing provisions of this Act, the following provisions shall have effect with regard to the banking business:—

(*a*) Any account of a customer with the Existing Bank shall on the appointed day be transferred to the New Bank and shall from that day become an account of the customer with the New Bank with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto as theretofore and so that any instruction, order, direction, mandate or authority given by that customer in relation to the account and subsisting on or given after the appointed day shall, unless and until revoked or cancelled, apply and have effect in relation to such account after its transfer to the New Bank:

(*b*) Any security held by the Existing Bank as security for the payment of debts or liabilities (whether present or future, actual or contingent) of any person shall be transferred or deemed to be transferred to the New Bank on the appointed day and shall be held by and be available to the New Bank as security for the payment to the New Bank of such debts and liabilities; and where the moneys secured by such a security include future advances to or liabilities of such person, the security shall as from that day be held by and be available to the New Bank as security for future advances to the

said person by, and future liabilities of the said person to, the New Bank to the same extent to which future advances by or liabilities to the Existing Bank were secured thereby immediately before that day:

(*c*) The New Bank shall, in relation to any security transferred or deemed to have been transferred to it in accordance with or by virtue of the provisions of this Act and the moneys thereby secured in accordance with those provisions, be entitled to the same rights and priorities and subject to the same obligations and incidents as the Existing Bank would have been entitled and subject to if the same had continued to be held by the Existing Bank:

(*d*) Any negotiable instrument or order for payment of money, whether drawn, given, accepted or endorsed before, on or after the appointed day, which is expressed to be drawn on or given to, or accepted or endorsed by, the Existing Bank, or payable at any place of business of the Existing Bank, shall on and from the appointed day have the same effect as if it had been drawn on, or given to, or accepted or endorsed by the New Bank, or payable at the same place of business of the New Bank:

(*e*) The custody of any document, goods or other property held by the Existing Bank as bailee for any other person shall be transferred or deemed to be transferred to the New Bank on the appointed day and the rights and obligations of the Existing Bank under any contract of bailment relating to such document, goods or property shall be transferred or deemed to be transferred on that day to the New Bank.

Rights under foreign securities.

8. All rights and powers vested in or exercisable by the Existing Bank immediately before the appointed day in respect of the banking business under any security not governed by the law of a part of the United Kingdom shall from and after the appointed day be deemed to be vested in or exercisable by the Existing Bank as trustee for the New Bank.

Actions, etc., not to abate.

9. Any action, arbitration or proceeding and any cause of action, arbitration or proceeding which shall on the appointed day be pending or existing by, against or in favour of the Existing Bank in relation to the banking business shall not abate or be discontinued or be prejudicially affected in any way by reason of the provisions of this Act, but the same may be prosecuted, continued and enforced by, against or in favour of the New Bank as and when it might have been prosecuted, continued and enforced by, against or in favour of the Existing Bank if this Act had not been passed.

Documents, etc., to remain evidence.

10. All documents, records and admissions in relation to the banking business which if this Act had not been passed would have been evidence in respect of any matter for or against the Existing Bank shall, on and after the appointed day, be admitted in evidence in respect of the same or the like matter for or against the New Bank.

Application of Bankers' Books Evidence Act 1879.

1879 c. 11.

11.—(1) Notwithstanding the transfer of the banking business to the New Bank under and in the terms of this Act, the provisions of the Bankers' Books Evidence Act 1879 shall continue to apply with respect to the books of the Existing Bank which are transferred to the New Bank by virtue of this Act and to entries made in such books before the appointed day.

(2) For the purposes of this section, " books " includes ledgers, day books, cash books, account books and all other books and records (including computer tape) used in the banking business before the appointed day.

Application of enactments and documents.

12.—(1) Subject to the provisions of this section, where—

(*a*) any enactment other than an enactment in this Act; or

(*b*) any document whensoever made or executed;

contains in relation to the banking business any reference express or implied to the Existing Bank such reference shall, on and after the appointed day and except where the context otherwise requires, be read, construed and have effect as a reference to the New Bank.

(2) Notwithstanding anything in the preceding subsection, where in pursuance thereof a reference to the Existing Bank in any document constituting or relating to any pension scheme or any provident fund of the Existing Bank in force immediately before the appointed day is to be read, construed and have effect as a reference to the New Bank, for the purpose of ascertaining and calculating the right to benefits thereunder, service or employment with the Existing Bank before the appointed day shall be taken into account as if it were service or employment with the New Bank, but the coming into force of this section shall not of itself give rise to any claim to benefit under any such scheme or fund or operate to cause a member thereof to become a member of another pension scheme or provident fund.

(3) Without prejudice to the generality of subsection (1) of this section, where by any order of the court or by any trust deed, settlement, covenant or agreement or where by any will, codicil or other testamentary writing, whether made or executed before or after the appointed day, the Existing Bank (whether alone or with any other person) was or is granted letters of administration or appointed trustee, executor or guardian or had any other fiduciary capacity, such order, trust deed, settlement, covenant, agreement, will, codicil or other testamentary writing shall not

fail by reason of anything in this Act but shall as from the appointed day be read and construed and have effect as if for any reference therein to the Existing Bank there was substituted a reference to the New Bank.

(4) Nothing in this Act shall exempt the New Bank from the provisions of any enactment relating to companies carrying on the business of banking.

Application to Northern Ireland.

13.—(1) It is hereby declared that this Act extends to Northern Ireland.

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

1920 c. 67.

(*a*) the provisions thereof shall be treated for the purposes of section 6 of the Government of Ireland Act 1920 (which provides that the Parliament of Northern Ireland may not repeal or alter Acts of the Parliament of the United Kingdom passed after the day appointed for the purposes of that section) as passed before that day; and

(*b*) (i) the expression "Act" shall include an Act of the Parliament of Northern Ireland;

(ii) in subsection (3) of section 4 (Transfer of banking business) of this Act for the reference to the Stock Transfer Act 1963 there shall be substituted a reference to the Stock Transfer Act (Northern Ireland) 1963;

1963 c. 18.
1963 c. 24 (N.I.).

(iii) for the purposes of section 10 (3) of the Business Tenancies Act (Northern Ireland) 1964 (which restricts a landlord's right to oppose an application for a new tenancy of business premises in certain cases) the transfer of an interest in land by virtue of this Act shall not constitute a purchase or creation of that interest; and

1964 c. 36 (N.I.).

(iv) in subsection (3) of section 6 (Saving of contracts, etc.) of this Act for the reference to the Redundancy Payments Act 1965 there shall be substituted a reference to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.

1965 c. 62.
1965 c. 19 (N.I.).

Application to Scotland.

14. This Act shall extend to Scotland and in the application thereof to Scotland the expression "mortgage" means a bond and disposition or assignation in security.

Costs of Act.

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

SCHEDULE

THE BANKING BUSINESS Section 2 (1).

1. The goodwill of the Existing Bank including the right to adopt and use its existing name.

2. All debit and credit balances on all banking accounts maintained with the Existing Bank.

3. The rights, obligations and duties of the Existing Bank as an executor, administrator or trustee of any will, estate, settlement, trust, debenture, debenture stock or loan stock.

4. All other assets, property, rights and powers wheresoever situate and all liabilities, provisions and obligations of the Existing Bank except—

(*a*) the share capital of the Existing Bank (including the right to call up the uncalled part of such share capital) and the share premium account and capital and revenue reserves (other than inner reserves) of the Existing Bank;

(*b*) the liabilities and obligations of the Existing Bank in respect of the subordinated stock and the subscription rights; and

(*c*) the interests of the Existing Bank in the share capitals of Commercial Union Assurance (Unit Trusts) Limited, Hambro Abbey Securities Limited, Hambro-Trafalgar Properties Limited, Hambros Unit Trust Managers Limited, Hereditaments Limited, Ulster Hambro Trust Managers Limited, Westminster Hambro Trust Managers Limited and The Hambro Trust Limited.

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SCHEDULE—The banking business.