



# Commercial and Private Bank Act 1991

## 1991 CHAPTER xxii

### 1 Short title

This Act may be cited as the Commercial and Private Bank Act 1991.

### 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;

“CPB” means Commercial and Private Bank;

“customer” includes any person having a bank account or other dealing, transaction or arrangement with WPZ or, as the case may be, CPB;

“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);

“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);

“subsidiary” has the meaning given by sections 736 and 736A of the Companies Act 1985;

“undertaking” means the business and all existing property and liabilities of WPZ, of whatsoever nature but does not include documents required to be kept by WPZ pursuant to the provisions of the Companies Act 1985;

“will” includes a codicil and any other testamentary writing; and

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“WPZ” means WPZ Bank (UK) Ltd.

- (2) Any reference in this Act to property or liabilities of WPZ is a reference to property or liabilities to which WPZ 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 WPZ, and whether WPZ 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 CPB shall appoint a day to be the appointed day for the purposes of this Act:

Provided that the day appointed under this subsection shall not be before CPB becomes an authorised institution for the purposes of the Banking Act 1987.

- (2) Before the day so appointed CPB shall publish in the London Gazette notice of the day appointed, stating that it is the appointed day for the purposes of this Act.

### **4 Transfer and vesting of WPZ’s undertaking to and in CPB**

- (1) On the appointed day the undertaking shall, by virtue of this Act and without further assurance, be transferred to, and vest in, CPB to the intent that CPB shall succeed to the undertaking as if in all respects CPB were the same person in law as WPZ.
- (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, WPZ shall, if CPB so requires, take all necessary steps for securing that the transfer and vesting of the property or liability to and in CPB 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, CPB by virtue of this Act which immediately before the appointed day was held by WPZ, 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 CPB 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 WPZ in any such fiduciary capacity, and any provision therein, or any existing contract or arrangement for the payment to, or retention by, WPZ of remuneration for its services in any such fiduciary 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 WPZ, other than a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, WPZ, there were substituted a reference to CPB.

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- (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 WPZ 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 WPZ 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, WPZ, there were substituted a reference to CPB.
- (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 WPZ is a party (whether in writing or not) shall be construed and have effect on and from the appointed day—
  - (a) as if CPB had been a party thereto instead of WPZ;
  - (b) as if for any reference (however worded and whether express or implied) to WPZ there were substituted, as respects anything falling to be done on or after the appointed day, a reference to CPB;
  - (c) as if any reference (however worded and whether express or implied) to the directors or to any director, officer or employee of WPZ were, as respects anything falling to be done on or after the appointed day, a reference to the directors of CPB or, as the case may require, to such director, officer or employee of CPB as CPB may appoint for that purpose or, in default of appointment, to the director, officer or employee of CPB who corresponds as nearly as may be to the first-mentioned director, officer 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, CPB by virtue of this Act, as if the contract, to the extent to which it is enforceable by and against WPZ, constituted two separate contracts, one of which is enforceable by and against CPB 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 WPZ as regards the part of the property or, as the case may be, liabilities not so transferred to, and vested in, C
- (2) Sub-paragraphs (b) and (c) of paragraph (1) above shall, on and from the appointed day, apply to any statutory provision and to any provision of any existing contract to which WPZ 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:

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 WPZ:
- (3) Any account between WPZ and a customer shall, on and from the appointed day, become an account between CPB and the customer subject to the same conditions and

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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 CPB 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 WPZ (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 CPB:
- (5) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, WPZ, or payable at any place of business of WPZ, whether so drawn, given, accepted or endorsed 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, CPB, or were payable at the same place of business of CPB:
- (6) The custody of any document or record, goods or other thing held by WPZ as bailee shall pass to CPB on the appointed day, and the rights and obligations of WPZ under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of CPB:
- (7)
  - (a) Any security held immediately before the appointed day by WPZ, or by a nominee or agent of or trustee for WPZ, 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, CPB and be available to CPB (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, CPB by or under this Act and any liabilities thereby secured, CPB shall be entitled to the same rights and priorities and subject to the same obligations and incidents to which WPZ 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 WPZ and CPB in respect of which WPZ or CPB, or a nominee or agent of or trustee for WPZ or CPB, 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, CPB 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 CPB (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 WPZ becomes property or a liability of CPB, CPB 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 CPB; and any legal proceedings or

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applications to any authority pending immediately before the appointed day by or against WPZ may be continued by or against CPB:

- (9) Any judgment or award obtained by or against WPZ and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against W

## **7 Contracts of employment**

- (1) Paragraph (1) of section 6 (Supplementary provisions as to transfer and vesting) of this Act applies to a contract for the employment of any person by WPZ; and employment with WPZ and CPB under any such contract shall be deemed for all purposes to be a single continuing employment.
- (2) No director, secretary or auditor of WPZ shall by virtue only of this Act become a director, secretary or, as the case may be, auditor of CPB or become entitled to hold an equivalent position in relation to a company incorporated outside the United Kingdom.

## **8 Pensions**

Any pension scheme of WPZ shall, on and from the appointed day, become a pension scheme of CPB and the trust deeds, rules and other documents and instruments constituting or relating to the same shall have effect accordingly.

## **9 Evidence: books and documents**

- (1) All books and other documents which would, before the appointed day, have been evidence in respect of any matter for or against WPZ shall be admissible in evidence in respect of the same matter for or against CPB.
- (2) In this section “documents” has the same meaning as in section 10 of the Civil Evidence Act 1968.

## **10 Application of Bankers' Books Evidence Act 1879**

- (1) On and from the appointed day the Bankers' Books Evidence Act 1879 shall apply to the books of WPZ transferred to, and vested in, CPB by virtue of this Act, and to entries made in those books before the appointed day, as if such books were the books of CPB.
- (2) For the purposes of section 4 of the said Act of 1879, books so transferred to, and vested in, CPB shall be deemed to have been the ordinary books of CPB at the time of the making of any entry therein which purports to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of business.
- (3) In this section “books” shall be construed in accordance with section 9 (2) of the said Act of 1879.

## **11 Evidence of transfer and vesting**

- (1) The production of a Queen’s Printer’s copy of this Act shall, for all purposes, be conclusive evidence of the transfer of any property and liabilities of WPZ to CPB, and of the vesting thereof in CPB, in accordance with the provisions of this Act.

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- (2) Without prejudice to the generality of subsection (1) above, any such copy of this Act shall, in relation to any registered securities within the meaning of the Stock Transfer Act 1963 transferred to, and vested in, CPB by virtue of this Act, operate for all the purposes of the said Act of 1963 as a duly executed stock transfer in respect of the transfer of such securities from WPZ to CPB.
- (3) Without prejudice to the generality of subsection (1) above—
- (a) any document made or executed on or after the appointed day whereby CPB, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by WPZ immediately before the appointed day, whether alone or jointly with any other person, shall be sufficient evidence that the interest of WPZ in that property has been transferred to and vested in CPB under this Act; and
  - (b) where there is any other transaction by CPB on or after the appointed day in connection with, or in relation to, any property or liability which is property or a liability of WPZ immediately before the appointed day, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that CPB has full power and authority for that transaction as if the property or liability had been transferred to and vested in it under this Act.
- (4) Without prejudice to the generality of subsection (1) above—
- (a) any document made or executed on or after the appointed day whereby WPZ, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by it immediately before the appointed day, whether alone or jointly with any other person, shall be sufficient evidence that its interest in that property has not been transferred to and vested in CPB under this Act; and
  - (b) where there is any other transaction by WPZ on or after the appointed day in connection with, or in relation to, any property or liability which is property or a liability of WPZ immediately before the appointed day, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that WPZ has full power and authority for that transaction as if the property or liability had not been transferred to and vested in CPB under this Act.
- (5) A joint certificate given by or on behalf of WPZ and CPB, whether given before, on or after the appointed day, that any property or liability specified in the certificate will transfer and vest or has transferred and vested, as the case may be, in CPB, or will not transfer and vest or has not transferred and vested, as the case may be, to and in CPB, under this Act shall be conclusive evidence for all purposes of the fact so certified.
- (6) Nothing in this section affects the liability of WPZ or CPB to the other of them in respect of anything done, or purported to have been done, by either of them in connection with, or in relation to, any property or liabilities.
- (7) In this section “convey” has the same meaning as in the Law of Property Act 1925.

## 12 Transfer and vesting of interests in land

The transfer and vesting of an interest in land by virtue of this Act shall not—

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- (a) constitute a purchase or creation of that interest for the purposes of section 30 (2) of the Landlord and Tenant Act 1954; or
- (b) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of that interest for the purposes of any provision in any instrument concerning that interest; or
- (c) give rise to any forfeiture; or
- (d) invalidate or discharge any contract or security; or
- (e) operate so as to merge any leasehold interest in the reversion expectant on it.

### **13 Saving for companies**

Nothing in this Act shall prejudice the powers of WPZ to alter its memorandum and articles of association or the powers of CPB to alter its articles of association; and nothing in this Act shall prejudice the powers of either WPZ or CPB to acquire or dispose of property or incur or satisfy liabilities or to carry on or discontinue its business or part thereof.

### **14 Dissolution of WPZ**

- (1) WPZ shall by virtue of this Act be dissolved on the day on which, in pursuance of a request made by or on behalf of CPB at any time after the appointed day, the Registrar of Companies strikes WPZ off the register.
- (2) Notwithstanding section 654 of the Companies Act 1985 (property of a dissolved company), on the day on which WPZ is struck off the register under subsection (1) above all documents required to be kept by WPZ pursuant to the provisions of the said Act of 1985 shall, by virtue of this Act, be transferred to, and vest in, CPB and, where so required to be kept at a place in England, shall be kept by CPB at such a place.

### **15 Saving for enactments concerning banking institutions**

Nothing in this Act shall exempt WPZ or CPB or any other subsidiary of CPB from the provisions of any enactment regulating the carrying on of the business of any of them.

### **16 Application to Scotland and Northern Ireland**

- (1) This Act shall extend to Scotland and Northern Ireland.
- (2) In the application of this Act to Scotland the following provisions shall have effect:—
  - (a) In the construction of this Act—
    - “assignment” includes an assignment;
    - “bailee” includes a custodian or a holder on deposit or pledge and
    - “contract of bailment” includes any other contract regulating custody of things;
    - “debenture” includes a floating charge or any instrument containing a floating charge;
    - “freehold land” includes heritable property;
    - “judgment” includes a decree;
    - “judicial trustee” includes a judicial factor;
    - “mortgage” includes a standard security, an assignation or disposition ex facie absolute and any agreement qualifying the same, a bond and

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disposition or assignation in security, a cash credit bond and disposition or assignation in security, an assignation in security and any real right or burden of whatever kind in the nature of a security; and

“will” includes a trust disposition and settlement and any deed taking effect on the death of any person whereby any part of his estate is disposed of, or under which a succession thereto arises:

- (b) All standard securities and cash credit bonds and dispositions or assignations in security expressed to be in favour of WPZ vested in CPB by virtue of this Act shall, on and from the appointed day, have the same effect in favour of CPB up to the maximum amounts stated therein respectively in all respects as if they had been originally granted in favour of CPB for such maximum amounts:
- (c) To enable CPB to complete a title, if thought fit, to any property vested in it by virtue of this Act by notice of title or otherwise, or to deduce title, this Act shall be deemed to be, and may be used as, a general disposition, conveyance or, as the case may be, assignation of such property in favour of CPB:
- (d) For the reference in subsection (2) of section 9 (Evidence: books and documents) of this Act to section 10 of the Civil Evidence Act 1968 there shall be substituted reference to section 17 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.

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

- (a) for the reference in subsection (2) of section 9 (Evidence: books and documents) of this Act to section 10 of the Civil Evidence Act 1968 there shall be substituted reference to section 6 of the Civil Evidence Act (Northern Ireland) 1971;
- (b) the reference in subsection (2) of section 11 (Evidence of transfer and vesting) of this Act to the Stock Transfer Act 1963 shall include a reference to the Stock Transfer Act (Northern Ireland) 1963;
- (c) for the reference in subsection (7) of section 11 (Evidence of transfer and vesting) of this Act to the Law of Property Act 1925 there shall be substituted reference to the Conveyancing Act 1881; and
- (d) for paragraph (a) of section 12 (Transfer and vesting of interests in land) of this Act, there shall be substituted the following:—
  - “(a) constitute a purchase or creation of an estate for the purposes of section 10 (3) of the Business Tenancies Act (Northern Ireland) 1964;”.