
STATUTORY INSTRUMENTS

2008 No. 2546

The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008

PART 5

THE SECOND TRANSFER

The second transfer

16.—(1) By virtue of this Order—

- (a) the rights and liabilities of Bradford & Bingley specified in paragraph 1 of Schedule 2;
- (b) the property specified in paragraph 3 of Schedule 2;
- (c) the contracts, agreements and other arrangements specified in paragraph 4 of Schedule 2;
- (d) the personal property specified in paragraph 5 of Schedule 2; and
- (e) the intellectual property specified in paragraph 6 of Schedule 2,

are transferred to Abbey.

(2) The transfer under paragraph (1) takes place immediately after the first transfer time (“the second transfer time”).

Isle of Man deposits

17.—(1) Subject to the prior approval of the Financial Services Commission of the Isle of Man of the proposed change of control of Bradford & Bingley International, as soon as practicable after the second transfer time, Bradford & Bingley shall—

- (a) transfer the Bradford & Bingley International shares to Abbey; and
- (b) take such steps as are reasonably necessary to ensure that—
 - (i) the transfer in sub-paragraph (a) is effective under Manx law (including but not limited to duly executing requisite transfers, paying related Manx taxes such as stamp duty and delivering the relevant share certificates to Abbey);
 - (ii) the Bradford & Bingley International shares are transferred to Abbey free from all trusts, liabilities and incumbrances;
 - (iii) any right or other entitlement to receive shares in Bradford & Bingley International (whether by subscription, conversion or otherwise) is extinguished with effect from the relevant time; and
 - (iv) Abbey is entered in the register of members of Bradford & Bingley International.

(2) By virtue of this Order—

- (a) the intercompany undertaking is terminated from the relevant time, except in relation to liabilities arising from or in respect of a breach of contract or other duty or of any legal or regulatory requirement occurring before the relevant time; and

- (b) subject to sub-paragraph (a) any interests, rights, entitlements or claims that have accrued in connection with the intercompany undertaking are extinguished.
- (3) Articles 18 to 22 apply to any transfer made under this article as they apply to the second transfer.
- (4) In this article—
 - “the Bradford & Bingley International shares” means all shares in Bradford & Bingley International held by or on behalf of Bradford & Bingley at the relevant time;
 - “the intercompany undertaking” means the undertaking by Bradford & Bingley, dated 4 December 2000, to discharge the liabilities of Bradford & Bingley International;
 - “the relevant time” means the time at which the transfer under paragraph (1) is effected.

No consent or concurrence required

18. The second transfer is effective despite the absence of any required consent or concurrence to or with the transfer.

Associated liability and interference

- 19.—(1) The second transfer takes effect as if—
- (a) no associated liability existed in respect of any failure to comply with any requirement in respect of the transfer; and
 - (b) there were no associated interference with the property, rights and liabilities transferred.
- (2) In this article, “associated liability” and “associated interference” have the meanings given in paragraph 2(2) of Schedule 2 to the Act.

Termination etc. of interest or right

- 20.—(1) Subject to paragraph (2)—
- (a) from the coming into force of this Order until the second transfer time, no person is entitled to terminate, modify, acquire or claim any interest or right to be transferred by article 16, or to treat such an interest or right as terminated or modified; and
 - (b) any purported termination, modification, acquisition or claim in contravention of sub-paragraph (a), and any action taken in consequence of a contravention of that sub-paragraph, shall have no effect.
- (2) This article shall not apply to the ordinary course of dealings by a depositor in relation to his retail deposit.

Interests, rights and liabilities of third parties relating to property, rights and liabilities transferred

- 21.—(1) No interest or right of any third party relating to any property, right or liability of Bradford & Bingley, whether or not it is transferred by article 16, shall arise or become exercisable by virtue of or in connection with the second transfer.
- (2) Save as otherwise provided in this Order, no third party shall, by virtue of or in connection with the second transfer, incur any liability or be subject to any obligation relating to any property, right or liability of Bradford & Bingley, whether or not it is transferred by article 16.
- (3) Without prejudice to the generality of paragraphs (1) and (2)—

- (a) the consequences specified in paragraph (4) shall not arise in respect of any relevant instrument as a result of the second transfer or any other thing done, or matter arising, by virtue of or in connection with that transfer; and
 - (b) any circumstances which, but for sub-paragraph (a), would give rise to the consequences specified in paragraph (4) shall be taken not to have arisen for the purposes of any relevant instrument.
- (4) The consequences are—
- (a) the termination of a relevant instrument or any rights or obligations under it;
 - (b) any right to terminate a relevant instrument or any right or obligation under it becoming exercisable;
 - (c) any amount becoming due and payable or capable of being declared due and payable;
 - (d) any other change in the amount or timing of any payment falling to be made or due to be received by any person;
 - (e) any right to withhold, net or set off any payment becoming exercisable;
 - (f) any event of default or breach of any right arising;
 - (g) any right not to advance any amount becoming exercisable;
 - (h) any obligation to provide or transfer any deposit or collateral;
 - (i) any right to give or withhold any consent or approval; or
 - (j) any other right or remedy (whether or not similar in kind to those referred to in sub-paragraphs (a) to (i)) arising or becoming exercisable.
- (5) Without prejudice to paragraph (4), any provision in a relevant instrument that, as a result of the second transfer or any other thing done, or matter arising, by virtue of or in connection with that transfer, provides for an obligation not to be created, suspends or extinguishes (in whole or in part) such an obligation or renders such an obligation subject to conditions, shall be of no effect.
- (6) In this article—
- “relevant instrument” has the same meaning as in paragraph 4(3) of Schedule 1 to the Act and the specified connection referred to in paragraph 4(3)(c) of that Schedule is between Bradford & Bingley and those undertakings whose assets and liabilities, profits and losses are consolidated in the consolidated accounts of Bradford & Bingley; and
 - “third party” shall be construed in accordance with paragraph 2(3) of Schedule 2 to the Act.

Modification of rights and liabilities transferred

22.—(1) Where a transferred obligation conflicts with an obligation of Abbey existing at the second transfer time, the transferred obligation is modified to the extent required to avoid that conflict.

(2) No person shall be entitled to acquire, claim, modify or terminate any interest or right by virtue of or in connection with paragraph (1).

(3) In this article a “transferred obligation” means an obligation, covenant, undertaking or restriction under a contract, agreement or arrangement transferred to Abbey under article 16(1)(c) or treated as made or done by or in relation to Abbey in accordance with article 25(a).

Foreign property etc.

23. Bradford & Bingley must take such steps as are reasonably requested by Abbey for securing the vesting in Abbey under the relevant foreign law of any foreign property, foreign rights or liabilities expressed to be transferred by article 16.

Subsequent transactions

24.—(1) To the extent that any property, rights or liabilities—

- (a) transferred by Bradford & Bingley to Abbey in connection with the second transfer do not relate mainly to the retail deposit business or to any property, rights or liabilities transferred to Abbey by article 16(1)(b) or (d); or
- (b) retained by Bradford & Bingley after the second transfer time relate mainly to the retail deposit business or to any property, rights or liabilities transferred to Abbey by article 16(1)(b) or (d),

the Treasury Solicitor and Abbey shall procure that such property, rights and liabilities are promptly transferred for no further consideration to Bradford & Bingley or Abbey as appropriate.

(2) This article shall not apply to any contract of employment or qualifying financial contract.

(3) Articles 18 to 22 apply to any transfer made under this article as they apply to the second transfer.

(4) For the purposes of this article “qualifying financial contract” means any agreement entered into either with the purpose of borrowing or lending money (not being a retail deposit), or in connection with a transaction on the financial markets, including (howsoever documented) any loan agreement, securities contract, derivative contract, commodities contract, forward contract, repurchase contract, swap agreement, margin lending agreement and master agreement.

Construction of documents etc.

25. As from the second transfer time, and save as otherwise provided in this Order—

- (a) agreements made or other things done by or in relation to Bradford & Bingley shall be treated, so far as may be necessary for the purposes of or in connection with the second transfer, but not otherwise, as made or done by or in relation to Abbey, as the case may be; and
- (b) references to Bradford & Bingley, or to any officer or employee of Bradford & Bingley, in instruments or documents relating to the property, rights and liabilities transferred by or under article 16 shall have effect as if they were references to Abbey, or to any officer or employee of Abbey, as the case may be.

Pensions

26. Schedule 3 shall have effect.

Employees

27.—(1) The Transfer of Undertakings (Protection of Employment) Regulations 2006(1) (the “transfer regulations”) and sections 257 and 258 of the Pensions Act 2004(2) shall apply upon the second transfer on the basis that any individual other than a director of Bradford & Bingley who is employed by a relevant undertaking and—

- (a) whose work relates wholly or mainly to—
 - (i) the retail deposit business of Bradford and Bingley; or
 - (ii) any property, rights or liabilities transferred to Abbey by article 16(1)(b) or (d); or
- (b) whose normal place of work is any real property transferred by article 16(1)(b),

(1) S.I. 2006/246.

(2) 2004 c.35.

is assigned to the organised grouping of resources or employees that is subject to the relevant transfer.

(2) Paragraph (1) is without prejudice to the application of the transfer regulations or sections 257 and 258 of the Pensions Act 2004 in respect of any individual not referred to in that paragraph.