



STATUTORY INSTRUMENTS.

S.I. No. 481 of 2009

CENTRAL BANK ACT 1971 (APPROVAL OF SCHEME OF FIRST
ACTIVE PLC AND ULSTER BANK IRELAND LIMITED) ORDER 2009

(Prn. A9/1765)

CENTRAL BANK ACT 1971 (APPROVAL OF SCHEME OF FIRST ACTIVE PLC AND ULSTER BANK IRELAND LIMITED) ORDER 2009

WHEREAS:

First Active plc (in the following order referred to as the “Transferor”) is a public limited company incorporated in Ireland (No. 292890) under the Companies Acts on 7 September 1998. The Transferor carries on a banking business in Ireland from its registered office at Ulster Bank Group Centre, George’s Quay, Dublin 2 and is the holder of a licence in relation thereto granted under section 9 of the Central Bank Act 1971 (the “Licence”), and

Ulster Bank Ireland Limited (in the following order referred to as the “Transferee”) is a private limited company incorporated in Ireland (No. 25766) under the Companies Acts on 4 December 1967 under the name Ulster Merchant Finance (Dublin) Limited. On 1 October 2001 it last changed its name to Ulster Bank Ireland Limited. The Transferee carries on a banking business in Ireland from its registered office at Ulster Bank Group Centre, George’s Quay, Dublin 2 and is the holder of a licence in relation thereto granted under section 9 of the Central Bank Act 1971.

AND WHEREAS on 8 October 2009 the Transferor and the Transferee submitted to the Minister for Finance for his approval the Scheme for Transfer (in the following order referred to as the “Scheme”) made by the Transferor and the Transferee on 8 October 2009.

NOW I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 33 of the Central Bank Act 1971 (No. 24 of 1971), after consultation with the Central Bank and Financial Services Authority of Ireland and, in respect of Articles 4 to 7 of the following Order, at the request of the Transferor and the Transferee, hereby order as follows:

1. This Order may be cited as the Central Bank Act 1971 (Approval of Scheme of First Active plc and Ulster Bank Ireland Limited) Order 2009.

2. In this Order—

“agreement” means the Transfer Agreement dated 8 October 2009 between the Transferor and the Transferee for the transfer of the Business and the Non-Scheme Business (as defined in the Agreement) from the Transferor to the Transferee;

“business” means all the business, undertaking, property, assets, rights, liabilities and obligations of the Transferor in the State to which the Licence relates and

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 8th December, 2009.

including, without limitation, immediately before the Transfer Date, the goodwill of such business, the benefit of all accounts with customers and others in connection therewith and all monies owing to and securities held by the Transferor in respect thereof, all intellectual property relating to the said business, and all contracts, instruments, deeds and agreements entered into by the Transferor, all of the property, assets and undertakings referred to in Schedule 1 to the Agreement and including, without limitation, the Scheme Assets and the Scheme Liabilities, but excluding the Excluded Business;

“excluded business” means all assets, rights, contracts, arrangements, obligations and liabilities of the type set out in Schedule 2 to the Agreement to which the Transferor is party, or held by the Transferor, as at the Transfer Date;

“scheme” means the scheme dated 8 October 2009 submitted to the Minister for his approval by the Transferor and Transferee under Section 33 of the Central Bank Act 1971 and the Agreement in so far as it relates to that scheme;

“scheme assets” has the meaning given to such term in the Agreement;

“scheme liabilities” has the meaning given to such term in the Agreement;

“transfer date” means 15 February 2010 or such later date (if any) as may be agreed by the Transferor and the Transferee as the effective date of the transfer of the Business pursuant to the Scheme and the Agreement.

3. The Scheme is approved.

4. (1) On and from the Transfer Date—

- (a) all books and other documents which would, before the Transfer Date, have been evidence in respect of any matter for or against the Transferor shall be admitted in evidence in respect of the same matter for or against the Transferee,
- (b) the Bankers’ Books Evidence Acts 1879 to 1989, shall continue to apply with respect to any books of the Transferor transferred to the Transferee in connection with the Business agreed to be transferred and to entries made in those books before the Transfer Date as if such books were the books of the Transferee, and
- (c) for the purposes of Section 4 of the Bankers’ Books Evidence Act 1879, any book to which that Act applies by virtue of paragraph (b) shall, on being proved to be in the custody of the Transferee, be deemed to be one of the ordinary books of the Transferee and any entry therein purporting to have been made before the Transfer Date shall be deemed to have been made in the ordinary course of business.

(2) In this Article “books” has the same meaning as “bankers books” in the Bankers’ Books Evidence Acts 1879 to 1989.

5. The Transferor shall, in respect of the Business agreed to be transferred, at the request of the Transferee, execute all instruments and do all such acts as may be necessary to transfer the property vested immediately before the Transfer Date in the Transferor as trustee, executor, guardian or in any other fiduciary capacity (as the case may be) to, and vest the same in, the Transferee in the same capacity upon the trusts and with and subject to the powers, provisions, liabilities and obligations applicable thereto respectively.

6. On and from the Transfer Date the Transferee shall be entitled to remuneration and to act as trustee, executor, guardian or in any other fiduciary capacity (as the case may be) at the same scale of fees and upon and subject to the same terms and conditions as were applicable to the Transferor immediately before the Transfer Date.

7. (1) Subject to paragraph (4), on the Transfer Date—

- (a) any contract of guarantee, indemnity, letters of credit or other contract or suretyship, loan agreement, facility agreement or facility letter, lease, hire purchase agreement, deposit agreement, charge, mortgage assignment, pledge, swap, option, forward, future or other derivative contract, bond, warrant, foreign exchange contract or any other contract, agreement or instrument of the type described in Schedule 1 to the Agreement undertaken or entered into by the Transferor with any person in the course of or incidental to the Business in force or in effect immediately before the Transfer Date shall be transferred or assigned or deemed to have been transferred or assigned to the Transferee and shall become from that date a contract, agreement or instrument between the Transferee and that person with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if such contract, agreement or instrument between the Transferor and such person had continued and any order, instruction, direction, mandate or authority given, whether before or after that date, by that person in relation to any such contract, agreement or instrument and subsisting at the Transfer Date shall apply and have effect after the transfer of such contract, agreement or instrument to the Transferee as aforesaid and all monies which at the Transfer Date are or may be or become payable to the Transferor pursuant thereto and the proceeds of any claims, awards and judgements which at the Transfer Date are or may be or become receivable or received by the Transferor pursuant thereto and all other rights and benefits whatsoever accruing to the Transferor under or by virtue of any such contract, agreement or instrument shall become due and payable by that person to the Transferee instead of the Transferor,
- (b) all assets, property (real, tangible or intangible), chattels, rights, contracts, arrangements, liabilities or obligations of the type described in Schedule 1 to the Agreement in which, at the Transfer Date, the Transferor has an interest or to which the Transferor is a party shall be transferred or conveyed to or deemed to have been transferred or

conveyed to, and assumed by, the Transferee and shall become as and from the Transfer Date assets, property, chattels, rights, contracts, arrangements, liabilities or obligations (as the case may be) of the Transferee and accordingly where such transfer relates to any interest that another party has in the matters so transferred—

- (i) that party shall continue to have that interest which shall be exercisable by or against the Transferee in the same manner as was exercisable by or against the Transferor before the Transfer Date, and
 - (ii) the Transferee, together with each and every other such party shall be bound by the terms of, or attaching to, such assets, property, chattels, rights, contracts, arrangements, liabilities or obligations in every way as if the Transferee were a party to those terms in substitution of the Transferor,
- (c) all—
- (i) shares of any class of the type described in Schedule 1 to the Agreement held, either directly or indirectly by the Transferor at the Transfer Date and in which the Transferor has an interest whether legal or beneficial and whether in certificated, dematerialised or uncertificated form (all of which are herein called the “Shares”),
 - (ii) stocks, shares, bonds and securities of any kind whatsoever (other than the Shares) of the type described in Schedule 1 to the Agreement whether marketable or otherwise held by the Transferor at the Transfer Date and all other interests of the Transferor including but not limited to loan capital and other investments of whatever nature in any company, firm, consortium, fund or other entity wheresoever situate at the Transfer Date (all of which are herein called the “Securities”),
 - (iii) allotments, accretions, offers, rights, benefits, income and advantages whatsoever of the type described in Schedule 1 to the Agreement at any time accruing, offered or arising in respect of the Shares and the Securities whether by way of conversion, redemption, bonus, preference, option, dividend, interest or otherwise,

shall be transferred to or deemed to have been transferred to the Transferee and shall become as and from that date the property, rights and assets of the Transferee.

(2) A reference (express or implied) to the Transferor in any contract, agreement, deed or instrument entered into in the course of or incidental to or relating to the Business made or executed before the Transfer Date shall be read and construed as a reference to the Transferee.

(3) Any instruction, order, direction, mandate or authority given to the Transferor in the course of or incidental to or relating to the Business and subsisting immediately before the Transfer Date shall be deemed to have been given to the Transferee.

(4) Paragraph (1) is subject to the following—

- (a) any asset, property, right, contract, arrangement, liability or obligation of the type described in Schedule 2 or Schedule 3 to the Agreement held or owned by the Transferor, or, as applicable, between the Transferor and any other party in force or effect on the Transfer Date, shall not be so transferred or assumed or deemed to be so transferred or assumed other than as provided pursuant to the Agreement and each such asset, property, right, contract, arrangement, liability and obligation shall, save to the extent otherwise provided in the Agreement, remain held or owned by the Transferor and where applicable, in full force and effect in accordance with its terms between the Transferor and the relevant party, and
- (b) a provision of this Order shall not take effect in relation to any asset, property, right, contract, arrangement, liability or obligation of the type described in Schedule 2 or Schedule 3 to the Agreement held or owned by the Transferor, or, as applicable, between the Transferor and any other party in force or effect on the Transfer Date.



GIVEN under my Official Seal,
7th December 2009.

BRIAN LENIHAN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

This Order approves the transfer of the banking business of First Active plc to Ulster Bank Ireland Limited in accordance with the transfer scheme submitted to the Minister for Finance. The effect of the Order is that the relevant provisions of Part III of the Central Bank Act 1971 will apply to the transfer. The Order also makes provision for matters arising from and incidental to, the transfer.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

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