

# ORDER IN COUNCIL

**XXIV**  
**2002**

ratifying a Projet de Loi

ENTITLED

**The Barclays Private Clients  
International Limited (Guernsey)  
Law, 2002**

(Registered on the Records of the Island of Guernsey  
on the 4th November, 2002.)



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2002

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 4th day of November, 2002 before Sir de Vic Carey, Bailiff;  
present:– Mrs. Eileen May Glass, Laurence Lenfestey Guille,  
Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David  
Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter  
Gerald Lane, Michael John Wilson, Michael Henry De La Mare,  
and Michael John Tanguy, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 22nd day of October, 2002, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Barclays Private Clients International Limited (Guernsey) Law, 2002”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED that the said Order in Council be registered on the records of this Island:–

## At the Court at Buckingham Palace

The 22nd day of October, 2002

PRESENT,

### The Queen's Most Excellent Majesty in Council

THE FOLLOWING report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:-

“IN ACCORDANCE with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:-

“1. That, in pursuance of their Resolution of the 29th day of May, 2002, the States of Deliberation at a meeting on the 26th day of June, 2002 approved a “Projet de Loi” entitled “The Barclays Private Clients International Limited (Guernsey) Law, 2002”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it.”

“2. That the “Projet de Loi” is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction “The Barclays Private Clients International Limited (Guernsey) Law, 2002”, and to order that it shall have force of law in the Islands of Guernsey.

“THE COMMITTEE, have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

HER MAJESTY, having taken the Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Island of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

HER MAJESTY'S Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

*A. K. Galloway*

# PROJET DE LOI

ENTITLED

## **The Barclays Private Clients International Limited (Guernsey) Law, 2002**

### ARRANGEMENT OF SECTIONS

1. Citation, commencement, appointments and notice of appointment.
2. Interpretation.
3. Transfer of Guernsey undertakings of Barclays Bank PLC, Barclays Finance Guernsey and Woolwich Guernsey to the Isle of Man Company.
4. Provisions as to trust property transferred and as to trusteeships, etc.
5. Supplementary provisions as to transfer and vesting.
6. Excluded Property.
7. Contracts of employment.
8. Benefits including retirement benefit schemes.
9. Evidential matters.
10. Certificate to be conclusive evidence.
11. Documents to remain evidence.
12. Application of Bankers Books Evidence (Guernsey) Law, 1954.
13. Savings in respect of transfer and vesting of property.
14. Savings for enactments concerning banking, etc. business.
15. Costs of Law.

# PROJET DE LOI

ENTITLED

## **The Barclays Private Clients International Limited (Guernsey) Law, 2002**

### **WHEREAS:**

1. Barclays Bank PLC is a public company registered under the Companies Acts 1948 to 1967 of England and Wales as a company limited by shares which carries on, inter alia, banking and financial services business in Guernsey, where it is licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994.
2. Barclays Finance Company (Guernsey) Limited (hereinafter referred to as “**Barclays Finance Guernsey**”) is a limited liability company incorporated in Guernsey under the Law entitled "Loi Relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1908 which also carries on banking and financial services business in Guernsey, where it is licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994.
3. Barclays Finance Guernsey is a subsidiary of Barclays Bank PLC.
4. Woolwich Guernsey Limited (hereinafter referred to as “**Woolwich Guernsey**”) is a limited liability company incorporated in Guernsey under the Law entitled "Loi Relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1908 which also carries on banking and financial services



Order in Council No. XXIV of 2002

business in Guernsey, where it is licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

5. Woolwich Guernsey is a subsidiary of Barclays Bank PLC.
6. Barclays Bank PLC is authorised to conduct banking and financial services business in the United Kingdom by the Financial Services Authority pursuant to the Financial Services and Markets Act 2000 of the United Kingdom.
7. Barclays Finance Company (Isle of Man) Limited (hereinafter referred to as “**the Isle of Man Company**”), which intends to change its name to Barclays Private Clients International Limited, is a company limited by shares incorporated in the Isle of Man under the Isle of Man Companies Acts 1931 to 1993 which carries on, inter alia, banking business in that Island, being licensed to do so under the Isle of Man Banking Act 1998.
8. For the better conduct of the businesses of Barclays Bank PLC, Barclays Finance Guernsey, Woolwich Guernsey and the Isle of Man Company, it is expedient to make provision for the transfer to the Isle of Man Company of the undertakings (or part or parts of the undertakings) of Barclays Bank PLC, Barclays Finance Guernsey and Woolwich Guernsey carried on in Guernsey, and such transfer should be effected economically and without interference with the conduct and continuity of the said undertakings and as provided in this Law.
9. It is expedient that the transfers referred to in recital 8 should be effected as provided in this Law.
10. It is further expedient that the other provisions contained in this Law should

be enacted.

**NOW THEREFORE THE STATES**, in pursuance of their Resolution of the 31<sup>st</sup> day of May, 2002<sup>a</sup>, have approved the following provisions which, subject to the sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

**Citation, commencement, appointments and notice of appointment.**

1. (1) This Law may be cited as the Barclays Private Clients International Limited (Guernsey) Law, 2002 and shall come into force on the day of its registration on the records of the Island of Guernsey.

(2) The directors of a transferor (or any committee or subcommittee appointed or nominated by them for the purpose) may, as respects a Guernsey undertaking consisting of the business, property and liabilities of the transferor, appoint -

- (a) such Guernsey undertaking to be an appointed undertaking;
- (b) the transferor to be the transferor thereof;
- (c) the Isle of Man Company to be the transferee thereof;
- (d) a day, being a day not later than the expiry of the period of five years beginning with the date upon which this Law comes into force, to be the appointed

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<sup>a</sup> Article VII of Billet d'État No. IX of 2002.



Order in Council No. XXIV of 2002

day for the transfer of the appointed undertaking from the transferor to the Isle of Man Company.

(3) The power of appointment referred to in subsection (2) may be exercised on more than one occasion, each such exercise relating to different businesses, property and liabilities.

(4) (a) The transferor and the Isle of Man Company shall, not less than fourteen days before a proposed appointed day, display at every one of their branches (if any) open to the public in Guernsey and at their registered offices a notice naming that day -

(i) stating that it is proposed to be an appointed day for the purposes of this Law,

(ii) describing concisely the appointed undertaking in respect of which it is proposed to be the appointed day, and

(iii) naming the proposed transferor, and the Isle of Man Company as transferee.

(b) The proposed transferor or the Isle of Man Company may publicise the effect of the appointment of the appointed day in any other manner as in its discretion it sees fit.

(c) On or not more than seven days before an appointed day, the transferor shall publish in La Gazette

Officielle a notice naming that day -

- (i) stating that it is an appointed day for the purposes of this Law,
  - (ii) describing concisely the appointed undertaking in respect of which it is to be the appointed day, and
  - (iii) naming the appointed transferor, and the Isle of Man Company as transferee.
- (d) The publication of a notice in La Gazette Officielle under paragraph (c) shall be conclusive evidence of a day being an appointed day for the purposes of this Law.
- (e) A photocopy or other reproduction, certified by an authorised officer of the transferor, Barclays Bank PLC or the Isle of Man Company, of a page or part of a page of La Gazette Officielle containing the notice published under paragraph (c) shall be conclusive evidence of publication of the notice.
- (f) A notice displayed under paragraph (a) or any publicity under paragraph (b) shall not bind the directors of the transferor (or any committee or subcommittee appointed or nominated by them for the purposes of subsection (2)) to make the appointment described in the notice or publicity; and any

appointment made under subsection (2), notice of which has been published under paragraph (c), shall not be invalidated by any accidental omission to display a notice under paragraph (a).

**Interpretation.**

2. (1) In this Law, unless the context requires otherwise -

“**account**” includes any contract or facility between a customer and a transferor by virtue of which money or any unit of account is, or may be, deposited or borrowed by any person;

“**appointed day**” means a day appointed under section 1(2) as an appointed day for the purposes of the Law (and different days may be appointed for the purposes of different parts of the Guernsey undertaking);

“**appointed undertaking**” means a Guernsey undertaking appointed under section 1(2);

“**Barclays Finance Guernsey**” means Barclays Finance Company (Guernsey) Limited, a company incorporated in Guernsey;

“**contract**” includes any agreement, transaction, arrangement or understanding, whether or not conditional or in writing and whether or not governed by the law of Guernsey;

“**customer**” includes any person having an account or any other dealing or contract with a transferor;

“**document**” means any thing in which information of any

Order in Council No. XXIV of 2002

description is recorded;

**“enactment”** includes an Order in Council, a Law, an Act of Parliament, an Ordinance and any other measure having legislative effect;

**“Excluded Property”** means all real property situate in Guernsey owned by a transferor, save for real property held as security for the payment or discharge of any liability;

**“existing”** means existing, outstanding or in force immediately before the relevant appointed day;

**“Guernsey”** means the Island of Guernsey;

**“Guernsey undertaking”** means the whole of the business, property and liabilities of whatever nature of each of the Guernsey branches of Barclays Bank PLC, of Barclays Finance Guernsey and of Woolwich Guernsey, whether carried on, vested or held beneficially or in a fiduciary capacity, other than the Excluded Property, or any part or parts of any such business, property or liabilities (whether or not capable of being operated or identified as a discrete business);

**“Isle of Man Company”** means Barclays Finance Company (Isle of Man) Limited, a company incorporated in the Isle of Man which intends to change its name to Barclays Private Clients International Limited;

**“liabilities”** includes debts, duties and obligations of any description (whether present or future, actual, contingent or prospective);

**“property”** means property and assets of every description and

Order in Council No. XXIV of 2002

includes property and assets held on trust or in a fiduciary capacity and securities, rights, benefits and powers of every description (whether present or future, actual, contingent or prospective);

**"relevant appointed day"**, in relation to an appointed undertaking, means the day appointed in respect of the transfer of that undertaking under section 1(2);

**"retirement benefits scheme"** means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect so as to provide any pension, lump sum, gratuity or such other benefit as may be prescribed, given on retirement or death, or in anticipation of retirement, or, in connection with past service, after retirement or death;

**"seal"** includes a common seal kept pursuant to Article VI of the Law entitled "Loi Relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1908 or section 25 of the Companies (Guernsey) Law, 1994 and also any official seal kept pursuant to section 26 of the Companies (Guernsey) Law, 1994;

**"security"** includes any standard security, any assignment and any agreement or other deed, instrument or document qualifying the same, any bond and disposition or assignment in security, any bond of cash credit, any real right or burden of whatever kind in the nature of a security, any mortgage or charge (whether legal or equitable), debenture, fixed security, floating charge, personal bond, bill of exchange, promissory note, trust receipt, warehouse warrant, guarantee, indemnity, lien, right of retention, hypothèque, pledge (whether actual or constructive), mandate, hypothecation, right of set-off, right of compensation or undertaking and any

Order in Council No. XXIV of 2002

other deed, document, conveyance, instrument, arrangement or means for securing the payment or discharge of any liability or any interest therein (in each case whether present or future, actual, contingent or prospective) and also includes any agreement or undertaking (whether in writing or not) to give or execute any of the foregoing whether upon demand or otherwise;

“**subsidiary**” has the same meaning as in Schedule 2 to the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>b</sup>;

“**transferor**” means the transferor of an appointed undertaking, being Barclays Bank PLC, Barclays Finance Guernsey or Woolwich Guernsey, as the case may be;

“**trustee**” includes a trustee or custodian trustee of any trust, settlement, covenant, contract or will (whether originally so appointed or not, and whether appointed under hand or seal or by order of any Court or otherwise); an executor of the will, or administrator of the estate, of a deceased person; a judicial trustee appointed by order of any Court; an attorney for another person; and any person acting in a fiduciary capacity;

“**will**” includes a codicil, a trust disposition or settlement, any other testamentary writing and any deed, disposition, contract, instrument or writing taking effect on the death of any person whereby any part of his estate is disposed of, or under which a succession thereto arises; and

“**Woolwich Guernsey**” means Woolwich Guernsey Limited.

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<sup>b</sup> Order in Council No. XIII of 1994.

(2) References in this Law to property and liabilities of a transferor are references to property vested in, belonging to or held by that transferor, and liabilities to which that transferor is subject, whether beneficially or in any fiduciary capacity, wherever situated or arising and whether or not capable of being transferred or assigned by that transferor.

(3) Any reference in this Law to any other enactment (including where the context so requires an enactment of the United Kingdom or any part thereof or of the Isle of Man) shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

**Transfer of Guernsey undertakings of Barclays Bank PLC, Barclays Finance Guernsey and Woolwich Guernsey to the Isle of Man Company.**

3. (1) On the relevant appointed day, the appointed undertaking shall by virtue of this Law and without further act or deed be transferred to and vest in the Isle of Man Company to the intent that the Isle of Man Company shall succeed to such appointed undertaking as if in all respects the Isle of Man Company were the same person in law as the transferor.

(2) Where the transfer or vesting of any property or liability comprised in the appointed undertaking referred to in subsection (1) is governed by the law of any country or territory outside Guernsey -

- (a) the transferor shall, if the Isle of Man Company so requires, take all necessary steps for securing that the transfer to and vesting in the Isle of Man Company of the property or liability is fully effective under the law of that country or territory; and



- (b) pending such transfer and vesting, the transferor shall hold the property or be subject to the liability as trustee for the Isle of Man Company.

**Provisions as to trust property transferred and as to trusteeships, etc.**

4. (1) Any property transferred to, and vested in, the Isle of Man Company by virtue of this Law which, immediately before the relevant appointed day, was held by a transferor, whether alone or jointly with any other person -

- (a) as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will, and whether originally so appointed or not, and whether appointed under hand or seal or by order of any court or otherwise;
- (b) as executor of the will of a deceased person;
- (c) as administrator of the estate of a deceased person;
- (d) as judicial trustee or judicial factor appointed by order of any court; or
- (e) in any other fiduciary capacity whatsoever;

shall, on and from such appointed day, be held by the Isle of Man Company 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 rights, powers, provisions, liabilities and obligations applicable thereto respectively.

- (2) Subject to subsection (4) -

Order in Council No. XXIV of 2002

- (a) any existing instrument or order of any court under or by virtue of which any property or liability comprised in an appointed undertaking became or may become vested in a transferor as trustee; and
- (b) any provision therein, or any existing contract, for the payment to or retention by a transferor of remuneration for its services in any such capacity;

shall, on and from the relevant appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to that transferor, other than a reference (however worded, and whether express or implied) to terms and conditions of, or to a rate, charge, tariff or scale of fees of, that transferor, there were substituted a reference to the Isle of Man Company.

(3) Subject to subsection (4) -

- (a) any will comprised in an appointed undertaking made before the relevant appointed day which has not been proved before that day; and
- (b) any will comprised in an appointed undertaking made on or after the relevant appointed day which appoints a transferor to be a trustee or recipient of any property as trustee;

shall, on and from the relevant appointed day, be construed and have effect as if for any reference therein to a transferor as such trustee or recipient or otherwise in connection with such appointment, other than a reference (however worded, and

whether express or implied) to terms and conditions of, or to a rate, charge, tariff or scale of fees of, that transferor, there were substituted a reference to the Isle of Man Company.

(4) Any right contained in any instrument, order or contract referred to in subsection (2) or any will referred to in subsection (3) to alter the relevant terms and conditions, or the rate, charge, tariff or scale of fees, of a transferor shall, on and from the relevant appointed day, be exercisable by the Isle of Man Company.

(5) No testamentary gift shall be deemed by reason only of the operation of any provision of this Law.

**Supplementary provisions as to transfer and vesting.**

5. (1) Without prejudice to the generality of any other provision of this Law but subject to any provision of this Law to the contrary, the following provisions of this section shall have effect in relation to an appointed undertaking.

(2) All existing contracts, offers to contract, agreements, certificates, awards, conveyances, deeds, leases, licences, notices, permits, guarantees, bonds, indemnities, mandates, instructions and other instruments and undertakings entered into by, made with, given to or by or addressed to a transferor in respect of an appointed undertaking (whether alone or with any other person and whether as principal or agent and whether in writing or not) shall be construed and have effect on and from the relevant appointed day -

(a) as if instead of the transferor, the Isle of Man Company had been the person by whom they were entered into, with whom they were made, to or by whom they were given or to whom they were

addressed (as the case may be);

- (b) subject to paragraph (d), as if for any reference (however worded and whether expressed or implied) to the transferor there were substituted, as regards anything falling to be done or capable of being done on or after such appointed day, a reference to the Isle of Man Company;
- (c) as if any reference (however worded and whether expressed or implied) to the directors, officers, representatives or employees, or to any director, officer, representative or employee, of the transferor were, as regards anything falling due to be done or capable of being done on or after such appointed day, a reference to the directors, officers, representatives or employees of the Isle of Man Company or, as the case may require, to such director, officer, representative or employee of the Isle of Man Company as the Isle of Man Company may nominate for that purpose or, in default of nomination, to the director, officer, representative or employee of the Isle of Man Company who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee; and
- (d) in a case where the contract or other instrument or undertaking relates to property or liabilities which are for the time being only partly transferred to, and vested in, the Isle of Man Company by virtue of this

Order in Council No. XXIV of 2002

Law, as if the contract, to the extent to which it is enforceable by and against the transferor, constituted two separate contracts -

- (i) one of which is enforceable by and against the Isle of Man Company as regards the part of the property or, as the case may be, liabilities so transferred to, and vested in, the Isle of Man Company and not as regards the other part; and
- (ii) the other of which is enforceable by and against the transferor as regards the part of the property or, as the case may be, liabilities not so transferred to, and vested in, the Isle of Man Company and not as regards the other part.

(3) Paragraphs (b) and (c) of subsection (2) shall, on and from the relevant appointed day, apply to -

- (a) any enactment (other than the provisions of this Law);  
and
- (b) any provisions of any existing contract relating to an appointed undertaking to which a transferor was not a party;

as they apply to a contract or other document to which subsection (2) applies.

(4) Paragraphs (a), (b) and (c) of subsection (2) shall, on and from the relevant appointed day, apply to any provision in any other existing

Order in Council No. XXIV of 2002

document (not being a contract or other document referred to in subsection (2) or a will) as they apply to a contract or other document referred to in subsection (2).

(5) Subsection (2)(b) shall not apply to the name or title of any rate, charge, tariff, scale of fees, terms or conditions of a transferor which includes the initials, the name or any part of the name of a transferor but, on and after the relevant appointed day, the Isle of Man Company may change the name or title.

(6) An offer made to or by a transferor relating to an appointed undertaking before the relevant appointed day shall be construed and have effect on and after the relevant appointed day as an offer made to or by the Isle of Man company.

(7) Any existing account contained in an appointed undertaking between a transferor and a customer shall, on and from the relevant appointed day, become an account between the Isle of Man Company and the customer with the same rights and subject to the same obligations, conditions and incidents (including rights of compensation and set-off) as theretofor; and such account shall be deemed for all purposes to be a single continuing account:

Provided that nothing herein shall affect any right of the transferor or the Isle of Man Company or of the customer to vary the rights, obligations, conditions or incidents subject to which any account is kept.

(8) For the purpose of construing and giving effect to any contract contained in an appointed undertaking which -

(a) has effect or continues to have effect on, or on and after, the relevant appointed day; and

Order in Council No. XXIV of 2002

- (b) makes reference to a rate, charge, tariff or scale of fees or to terms or conditions published, determined or ascertained from time to time by the transferor;

the Isle of Man Company shall have the same right under that contract as the transferor had to publish, determine, ascertain, vary or amend rates, charges, tariffs, scales of fees, terms or conditions, and any such rates, charges, tariffs, scales of fees, terms or conditions published, determined, ascertained, varied or amended by the Isle of Man Company shall apply in place of those which could have been published, determined, ascertained, varied or amended by the transferor.

(9) Any existing instruction, order, direction, mandate, notice, representation, power of attorney, authority, undertaking or consent given to or by a transferor relating to an appointed undertaking (whether in writing or not, and whether or not in relation to an existing account, and whether alone or jointly with another person) shall apply and have effect, on and from the relevant appointed day, as if given to or by the Isle of Man Company or, as the case may be, to or by the Isle of Man Company jointly with such other person.

(10) Any negotiable instrument, cheque or other bill of exchange, warrant, draft, letter of credit or order for payment of money in relation to an appointed undertaking drawn on or by, or given to, or accepted or endorsed by, the transferor, or payable at any place of business of the transferor, whether so drawn, given, accepted, endorsed or payable before, on or after the relevant appointed day, shall have the same effect, on and from such appointed day (or, if it be later, the date upon which it is drawn, given, accepted or endorsed), as if it had been drawn on or by, or given to, or accepted or endorsed by, the Isle of Man Company or, as the case may be, as if the place of business at which it is payable were a place of business of the Isle of Man Company.



Order in Council No. XXIV of 2002

(11) Any notice, document, claim or demand addressed before, on or after an appointed day to a transferor pursuant to any existing contract contained in an appointed undertaking shall be deemed to have been addressed to the Isle of Man Company.

(12) The custody or possession of any document, record, goods or other property held by a transferor, or by an agent for or nominee of a transferor, and relating to an appointed Guernsey undertaking, as a bailee, depository or custodian, shall pass to the Isle of Man Company on and from the relevant appointed day or, as the case may require, shall be held by such agent or nominee as agent for or nominee of the Isle of Man Company, and the rights and obligations of the transferor under any contract of bailment, deposit or custodianship relating to such document, record, goods or property, or under any other contract or arrangement (whether in writing or not) or deed or other instrument or document regulating custody or possession of the same, shall on such appointed day become rights and obligations of the Isle of Man Company.

(13) (a) Any security held, immediately before the relevant appointed day, in relation to an appointed undertaking by a transferor, or by a nominee or agent of or trustee for a transferor, as security for the payment or discharge of any liability shall, on and from such appointed day, be held by or in favour of the Isle of Man Company and be available to the Isle of Man Company (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 such liability.

(b) In relation to any security transferred to and vested in

the Isle of Man Company by or under this Law and any liabilities thereby secured, the Isle of Man Company shall, on and from the relevant appointed day, be entitled to the same rights and priorities and subject to the same obligations and incidents to which the transferor would have been entitled and subject if such security had continued to be held by it or in its favour.

- (c) Without prejudice to the generality of paragraph (b), in any case where any existing liability subsists between a transferor and the Isle of Man Company in respect of which that transferor or the Isle of Man Company, or a nominee or agent of or trustee for that transferor or the Isle of Man Company, holds a security, all such liability shall, for the purpose of enforcing or realising that security, be deemed to continue in effect notwithstanding the transfer to, and vesting in, the Isle of Man Company of the appointed undertaking.
- (d) Where any security such as is mentioned in paragraphs (a) to (c) extends to future advances or future liabilities, the said security shall, on and from the relevant appointed day, be held by or in favour of the Isle of Man Company, and be available to the Isle of Man Company, as security for future advances by, or future liabilities to, the Isle of Man Company to the same extent and in the same manner in all respects as if it had been originally granted in favour of, and had

Order in Council No. XXIV of 2002

originally extended to future advances by, or future liabilities to, the Isle of Man Company.

(14) Where by virtue of this Law any property or liability of a transferor in respect of an appointed undertaking becomes the property or liability of the Isle of Man Company, the Isle of Man Company and all other persons shall, on and from the relevant 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, claiming, perfecting or enforcing that property or liability as if it had at all times been the property or liability of the Isle of Man Company.

(15) Any right of action and any remedy available in consequence thereof which relates to an appointed undertaking -

- (a) which accrues, arises or becomes enforceable or available before the relevant appointed day by or against a transferor; or
- (b) which would, in the absence of a transfer pursuant to this Law and subject to the provisions relating thereto in this Law, accrue, arise or become enforceable or available by or against a transferor on or after the relevant appointed day;

may, subject to the provisions relating to the appointed undertaking in this Law, be enforced and availed of by or against the Isle of Man Company on and after that appointed day.

(16) Any legal proceedings, applications to any authority or other

proceedings for the resolution of a dispute pending or current immediately before the relevant appointed day by or against a transferor and which relate to the appointed undertaking may be continued by or against the Isle Of Man Company.

(17) Any judgment, decree, order or award obtained by or against a transferor which relates to an appointed undertaking and which is not fully satisfied before the relevant appointed day shall, on and from such appointed day, to the extent that it is enforceable by or against the transferor, be enforceable by or against the Isle of Man Company.

(18) On the relevant appointed day, the Isle of Man Company shall-

- (a) succeed to all the rights, liabilities and obligations of the transferor in respect of data which is comprised in the appointed undertaking transferred on that day and which is subject to the Data Protection (Bailiwick of Guernsey) Law, 1986<sup>c</sup> and/or the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>d</sup> (“the Data Protection Legislation”);
- (b) become the data controller of any data which is comprised in the appointed undertaking transferred on that day and which is subject to the Data Protection Legislation in place of the transferor, and shall be deemed to have been the data controller of all such

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<sup>c</sup> Ordres en Conseil Vol. XXIX, p. 426.

<sup>d</sup> The Projet de Loi was approved by Her Majesty in Council on the 26<sup>th</sup> March, 2002 and registered by the Royal Court on the 29<sup>th</sup> April, 2002.

data at all material times when data was processed;

- (c) in relation to the appointed undertaking transferred on that day, be under the same duty by virtue of any requirement of law as the transferor was under to respect the confidentiality and privacy of any person and shall be bound by any specific notice given or request made by a data subject which was binding on the transferor and which required it not to use data for marketing purposes.

(19) In any consent given by a data subject in respect of such data as is mentioned in subsection (18)(a), any reference to the transferor shall be deemed to include a reference to the Isle of Man Company and any subsidiary or holding company of the Isle of Man Company and any subsidiary of such a holding company.

(20) In subsection (19) the terms “subsidiary” and “holding company” shall have the meanings assigned to them under the law of the Isle of Man.

(21) The Data Protection Commissioner for the time being holding office under the Data Protection Legislation may, on and from the relevant appointed day, serve on the Isle of Man Company any notice under the Data Protection Legislation relating to the appointed undertaking which he could have served on the transferor in respect of a breach by it of the data protection principles; but the transfer to, and vesting in, the Isle of Man Company by this Law of the appointed undertaking (and any disclosure to the Isle of Man Company of any information in contemplation or as a result thereof) shall not amount to a breach of any duty of confidentiality to which the transferor is subject at the date of such

disclosure or to a contravention by it or by the Isle of Man Company of the data protection principles.

(22) Nothing in this Law shall terminate or prejudicially affect the appointment, authority, rights or powers of any receiver or of any receiver and manager appointed by a transferor in respect of an appointed undertaking, whether alone or with others, before the relevant appointed day.

**Excluded Property.**

6. Neither section 3 (transfer of Guernsey undertakings of Barclays Bank PLC, Barclays Finance Guernsey and Woolwich Guernsey to the Isle of Man Company) nor subsection (2) of section 5 (supplementary provisions as to transfer and vesting) shall apply to the Excluded Property.

**Contracts of employment.**

7. (1) Subject to the provisions of section 8(1), every contract of employment relating to an appointed undertaking to which a transferor is a party, and of which either the proper law is the law of Guernsey or performance takes place wholly or mainly in Guernsey, shall be construed and have effect on and from the relevant appointed day as if the Isle of Man Company had been a party thereto instead of the transferor and as if for any reference (however worded and whether express or implied) to the transferor there were substituted a reference to the Isle of Man Company; and employment with the transferor and the Isle of Man Company under any such contract shall be deemed for all purposes to be a single continuing employment.

(2) No director, secretary or auditor of a transferor shall by virtue of this Law become a director, secretary or, as the case may be, auditor of the Isle of Man Company.

**Benefits including retirement benefit schemes.**

8. (1) In so far as any benefits provided immediately before the relevant appointed day pursuant to contracts of employment referred to in section 7(1) will, by reason of the operation of the laws of the United Kingdom or any part thereof or the laws of Guernsey or the Isle of Man, cease to be available (whether immediately upon the appointed day or at some date thereafter) as a result of a transfer effected by section 7(1), the Isle of Man Company shall take such steps as are necessary in order to provide to such affected employees benefits of equivalent value to those benefits provided immediately before the relevant appointed day.

(2) In this section references to "benefits" includes membership of any retirement benefits scheme.

**Evidential matters.**

9. (1) A copy of this Law printed by authority or a photocopy thereof, and such evidence of publication of a notice of an appointed day in relation to an appointed undertaking as is specified in section 1(4)(c), shall for all purposes be conclusive evidence of the transfer to and vesting in the Isle of Man Company of an appointed undertaking in accordance with the provisions of this Law.

(2) Without prejudice to the generality of subsection (1) -

- (a) any document made or executed on or after the appointed day whereby the Isle of Man Company or a transferor, 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 forming part of the



appointed undertaking held by that transferor immediately before the relevant appointed day, whether alone or jointly with any other person, shall -

- (i) in the case of such a document referring to the property as property held by the Isle of Man Company, be sufficient evidence that the interest of that transferor in that property has been transferred to and vested in the Isle of Man Company, alone or jointly, under this Law; and
  - (ii) in the case of such a document referring to the property as property held by a transferor, be sufficient evidence that the interest of that transferor in that property has not been transferred to and vested in the Isle of Man Company, alone or jointly, under this Law; and
- (b) where there is any other transaction which related to an appointed undertaking by the Isle of Man Company or a transferor on or after the relevant appointed day in connection with, or in relation to, any property or liability which was the property or liability of that transferor immediately before that appointed day, it shall be deemed in favour of any other party to the transaction, or any other person claiming through or under him, that the Isle of Man Company or, as the case may be, that transferor has full power and

authority for that transaction as if -

- (i) in the case of a transaction by the Isle of Man Company, the property or liability had been transferred to and vested in the Isle of Man Company under this Law; and
- (ii) in the case of a transaction by a transferor, the property or liability had not been transferred to and vested in the Isle of Man Company under this Law.

**Certificate to be conclusive evidence.**

10. A certificate given by or on behalf of either a transferor or the Isle of Man Company, whether given before, on or after an appointed day, that any property or liability of the transferor specified in the certificate will or will not transfer and vest, or has or has not transferred or vested, as the case may be, to and in the Isle of Man Company under this Law, shall be conclusive evidence for all purposes of the facts so certified.

**Documents to remain evidence.**

11. (1) All books and other documents which would, before a relevant appointed day, have been evidence in respect of any matter for or against a transferor in respect of an appointed undertaking shall, on and from such appointed day, be admissible in evidence in respect of the same matter for or against the Isle of Man Company.

(2) In this section the expression “documents” includes, in addition to a document in writing -

Order in Council No. XXIV of 2002

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sound or other data (not being visual images) are embodied so as to be capable (whether with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) any film, microfilm, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom.

**Application of Bankers Books Evidence (Guernsey) Law, 1954.**

12. (1) The Bankers Books Evidence (Guernsey) Law, 1954 (hereinafter referred to as "the Law of 1954") shall, on and from the relevant appointed day, apply to the banker's books of a transferor transferred to, and vested in, the Isle of Man Company by virtue of this Law, and to entries made in those books before that appointed day, as if such books were books of the Isle of Man Company.

(2) For the purposes of section 6 of the Law of 1954, bankers books so transferred to the Isle of Man Company shall be deemed to have been the ordinary books of the Isle of Man Company at the time of the making of any entry therein which purports to have been made before the relevant 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 “banker’s books” has the same meaning as in section 1(1) of the Law of 1954.

**Savings in respect of transfer and vesting of property.**

13. It is hereby declared that the transfer and vesting of any property or liability to and in the Isle of Man Company by virtue of this Law shall not -

- (a) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of property or of an interest in property for the purposes of any provision relating to assignment, transfer, devolution, alienation, parting with possession or other disposition contained in any deed or other instrument or document concerning that property or that interest;
- (b) operate as a breach of covenant or condition against alienation;
- (c) give rise to any forfeiture;
- (d) invalidate or discharge any contract or security;
- (e) require further registration in respect of any security;
- (f) cause or enable the benefit of any contract, permission, right of pre-emption, licence or privilege enjoyed by a transferor of an appointed undertaking or the Isle of Man Company as the transferee of that undertaking to be, or to be liable to be, lost or

surrendered or otherwise affected, or require the disposal by the transferor or the Isle of Man Company of any interest, otherwise than as provided for in this Law;

- (g) relieve any person under an obligation to the transferor of an appointed undertaking of a corresponding obligation to the Isle of Man Company;
- (h) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any contract or instrument to which the transferor of an appointed undertaking or the Isle of Man Company is a party or is bound;
- (i) allow any party to a contract to terminate that contract when he would not have otherwise have been able to terminate it;
- (j) operate so as to merge any leasehold interest in the reversion expectant on it;
- (k) enable any party to a contract to which the transferor of an appointed undertaking or the Isle of Man Company is a party by virtue of this Law or otherwise to vary the terms of that contract when he would not otherwise have been able to vary those terms or confer a right or benefit on him which he would not otherwise have had; or

- (l) cause the imposition of any greater or lesser obligation on any party to any contract to which a transferor or the Isle of Man Company is a party when that greater or lesser obligation would not otherwise have been imposed.

**Savings for enactments concerning banking, etc. business.**

14. Subject to the provisions of this Law, nothing in this Law shall exempt a transferor or the Isle of Man Company from the provisions of any enactment regulating the carrying on of the business of any of them in Guernsey.

**Costs of Law.**

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