

ORDER IN COUNCIL

**XXIV
2001**

ratifying a Projet de Loi

ENTITLED

The Ansbacher Group (Guernsey) Law, 2001

(Registered on the Records of the Island of Guernsey
on the 20th November, 2001.)



2001

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 20th day of November, 2001 before de Vic Graham Carey, Esquire, Bailiff; present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Gerald Peter Lane, 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 31st day of October, 2001, approving and ratifying the Projet de Loi of the States entitled “The Ansbacher Group (Guernsey) Law, 2001”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 31st day of October, 2001

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS, there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 10th day of October 2001 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

“1. That, in pursuance of their Resolution of the 28th day of February 2001, the States of Deliberation at a meeting held on the 27th day of June 2001 approved a Bill or “Projet de Loi” entitled “The Ansbacher Group (Guernsey) Law, 2001”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Ansbacher Group (Guernsey) Law, 2001”, and to order that the same shall have force of law in the Island of Guernsey.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of law within the Island of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Ansbacher Group (Guernsey) Law, 2001

ARRANGEMENT OF SECTIONS

1. Vesting of undertaking of Ansbacher (Guernsey) Limited in Ansbacher (Channel Islands) Limited.
2. Provisions as to trust property and wills.
3. Supplementary provisions as to transfer and vesting.
4. Excluded property.
5. Contracts of employment, etc.
6. Evidence of transfer and vesting.
7. Evidence: documents.
8. Application of Bankers' Books Evidence (Guernsey) Law, 1954.
9. Savings in respect of transfers and vesting of property.
10. Costs of Law.
11. Interpretation.
12. Citation.

PROJET DE LOI

ENTITLED

The Ansbacher Group (Guernsey) Law, 2001

WHEREAS -

1. Ansbacher (Guernsey) Limited (hereinafter called the "**transferor company**") is a company registered in Guernsey under the Companies (Guernsey) Laws, 1908 to 1990.
2. The transferor company carries on in the Island of Guernsey (hereinafter called the "**Island**") and elsewhere the businesses of banking and financial services and other related activities and is licensed in the Island under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 and the Protection of Investors (Bailiwick of Guernsey) Law, 1987.
3. Ansbacher (Channel Islands) Limited (hereinafter called "**the transferee company**"), formerly named Ansbacher (Jersey) Limited, is a company registered in Jersey under the Companies (Jersey) Laws 1861 to 1968.
4. The transferee company carries on in the Island of Jersey and elsewhere the business of banking and other related activities and holds a banking licence under the Banking Business (Jersey) Law, 1991.
5. The transferor company and transferee company are subsidiaries of Ansbacher Holdings Limited, which is also a company registered in

Guernsey under the Companies (Guernsey) Laws, 1908 to 1990.

6. The transferee company has applied to the Guernsey Financial Services Commission for licences under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 and the Protection of Investors (Bailiwick of Guernsey) Law, 1987.
7. For the better conduct of the businesses of the transferor company, the transferee company and Ansbacher Holdings Limited, it is expedient that provision be made for the transfer to and vesting in the transferee company of the undertaking of the transferor company, including the rights and obligations of the transferor company under any contract of employment the proper law of which is the law of the Island, with the intent that the said undertaking be conducted by a branch of the transferee company to be established in the Island.
8. It is further expedient that the transfer and vesting of the said undertaking should be effected economically without interference with the conduct and continuity of the businesses carried on by the transferor company, the transferee company and Ansbacher Holdings Limited and as provided in this Law, and that the other provisions contained in this Law relative thereto and consequential thereon should be enacted:

NOW THEREFORE THE STATES, in pursuance of their Resolution of the 28th February, 2001^a, 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.

Vesting of undertaking of Ansbacher (Guernsey) Limited in Ansbacher (Channel Islands) Limited.

1. (1) On the appointed day the undertaking of Ansbacher (Guernsey) Limited (hereinafter called the "**transferor company**") shall, by virtue of this Law and without further assurance, be transferred to, and vest in, Ansbacher (Channel Islands) Limited (hereinafter called the "**transferee company**") to the intent that the transferee company shall succeed to the undertaking as if in all respects the transferee company were the same person in law as the transferor company.

(2) Where the transfer or vesting of any property or liability comprised in the undertaking is governed by the law of any country or territory outside the Island, the transferor company shall, if the transferee company so requires, take all necessary steps for securing that the transfer to and vesting in the transferee company of the property or liability is fully effective under the law of that country or territory.

Provisions as to trust property and wills.

2. (1) Any property transferred to, and vested in, the transferee company by virtue of this Law which immediately before the appointed day was held by the transferor company, whether alone or jointly with any other person, as trustee shall, on and from the appointed day, be held by the transferee company alone or, as the case may be, jointly with such other person in the same capacity

^a Article V of Billet d'État No. III of 2001.

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 the transferor company as trustee, and any provision therein, or any contract for the payment to, or retention by, the transferor company of remuneration for its services in any such 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 the transferor company (including, without prejudice to the generality of the foregoing, any reference, however worded and whether express or implied, to terms and conditions of, or to a charge, tariff or scale of fees of, the transferor company) there were substituted a reference to the transferee company.

(3) Any will made before the appointed day which has not been proved in the Island before the appointed day, and any will made on or after the appointed day, being a will which appoints the transferor company to be a trustee or recipient of any property as trustee, shall be construed and have effect as if for any reference therein to the transferor company as such trustee or recipient or otherwise in connection with such appointment (including, without prejudice to the generality of the foregoing, any reference, however worded and whether express or implied, to terms and conditions of, or to a charge, tariff or scale of fees of, the transferor company) there were substituted a reference to the transferee company.

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

Supplementary provisions as to transfer and vesting.

3. (1) Without prejudice to the generality of the foregoing provisions of this Law but subject to any provision of this Law to the contrary, the

following provisions shall have effect in relation to the undertaking.

(2) Every contract to which the transferor company is a party shall be construed and have effect on and from the appointed day -

- (a) as if the transferee company had been a party thereto instead of the transferor company;
- (b) as if for any reference (however worded and whether express or implied) to the transferor company there were substituted a reference to the transferee company;
- (c) as if any reference (however worded and whether express or implied) to the directors, officers, representatives or employees or to any director, officer, representative or employee of the transferor company were a reference to the directors, officers, representatives or employees of the transferee company as the case may require, or to such director, officer, representative or employee of the transferee company as the transferee company may nominate for that purpose or, in default of nomination, to the director, officer, representative or employee of the transferee company who corresponds as nearly as may be to the first mentioned director, officer, representative 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, the transferee company by virtue of this Law, as if the contract, to the extent to which it is enforceable by and against the transferor company, constituted two separate contracts, one of which is enforceable by and against the transferee company as regards the part of the property or, as the case may be, liabilities so transferred to, and vested in, the transferee company and not as regards the other part, and the other of which is enforceable by and against the transferor company as regards the part of the property or, as the case may be, liabilities not so transferred to, and vested in, the transferee company and not as regards the other part.

(3) Paragraphs (b) and (c) of subsection (2) shall, on and from the appointed day, apply to any enactment other than the provisions of this Law and to any provision of any contract to which the transferor company was not a party; and paragraphs (a), (b) and (c) of that subsection shall, on and from the appointed day, apply to any provision of any other document (not being a contract or a will) as they apply to a contract to which subsection (2) applies.

(4) An offer or invitation to treat made to or by the transferor company before the appointed day shall be construed and have effect on and after the appointed day as an offer or invitation to treat, as the case may be, made to or by the transferee company.

(5) Any account between the transferor company and a customer shall, on and from the appointed day, become an account between the transferee company and the customer subject to the same conditions and incidents (including rights of compensation and set-off) 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 the transferee company or the customer on or after the appointed day to vary the conditions or incidents subject to which any account is kept.

(6) For the purpose of construing and giving effect to any contract which -

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

the transferee company shall have the same right under that contract as the transferor company 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 transferee company shall apply in place of those which could have been published, determined, ascertained, varied or amended by the transferor company.

(7) Any existing instruction, order, direction, mandate, notice, representation, power of attorney, authority, undertaking or consent given to or by the transferor company (whether in writing or not) shall have effect, on and from the appointed day, as if given to or, as the case may be, by the transferee company.

(8) Any negotiable instrument, cheque or other bill of exchange, warrant, draft, letter of credit or order for payment of money drawn on or by, or given to, or accepted or endorsed by, the transferor company, or payable at any place of business of the transferor company, whether so drawn, given, accepted, endorsed or payable 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 by, or given to, or accepted or endorsed by, the transferee company or were payable at the same place of business of the transferee company.

(9) Any notice, document, claim or demand addressed on or after the appointed day to the transferor company pursuant to an existing contract shall be deemed to have been addressed to the transferee company.

(10) The custody of any document, goods or other thing held by the transferor company as bailee shall pass to the transferee company on the appointed day, and the rights and obligations of the transferor company under any contract of bailment relating to any such document, goods or thing shall on that day become rights and obligations of the transferee company.

(11) Any security held immediately before the appointed day by or on behalf of the transferor company as security for the payment or discharge of any liability shall, on and from the appointed day, be held by or on behalf of the transferee company and be available to the transferee 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 that liability.

(12) In relation to any security transferred to, and vested in, the transferee company by or under this Law and any liabilities thereby secured, the transferee company shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which the transferor company would have

been entitled or subject if it had continued to hold the security.

(13) Without prejudice to the generality of subsection (12), in any case where any existing liability subsists between the transferor company and the transferee company in respect of which the transferor company or the transferee company, or a nominee or agent of or trustee for the transferor company or the transferee company, holds a 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, the transferee company of the undertaking.

(14) Any security referred to in subsection (11), (12) or (13) which extends to future advances or liabilities shall, on and from the appointed day, be available to the transferee 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 future advances and future liabilities to the same extent and in the same manner in all respects as it extends immediately before that day to future advances or liabilities.

(15) Where by virtue of this Law any property or liability of the transferor company becomes property or a liability of the transferee company, the transferee company 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 the transferee company.

(16) Any right of action and any remedy available in consequence thereof which accrues, arises or becomes enforceable or available before the appointed day by or against the transferor company, or which would, but for this Law, accrue, arise or become enforceable or available by or against the transferor

company on or after the appointed day, may be enforced or availed of by or against the transferee company on or after the appointed day and any legal proceedings, applications to any authority or other proceedings for the resolution of a dispute pending or current immediately before the appointed day by or against the transferor company may be continued by or against the transferee company.

(17) Any judgment, order or award obtained by or against the transferor company and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against the transferor company, become enforceable by or against the transferee company.

(18) The Data Protection Commissioner may, on and from the appointed day, serve on the transferee company any notice under section 10 of the Data Protection (Bailiwick of Guernsey) Law, 1986^b which he could have served on the transferor company in respect of a breach by the transferor company of the data protection principles; but the transfer to, and vesting in, the transferee company by this Law of the undertaking (and any disclosure to the transferee 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 company is subject at the date of such disclosure or to a contravention by the transferor company or the transferee company of the data protection principles.

Excluded property.

4. Neither section 1 (vesting of undertaking of Ansbacher (Guernsey) Limited in Ansbacher (Channel Islands) Limited) nor subsection (2) of section 3 (supplementary provisions as to transfer and vesting) shall apply to the excluded property.

^b Ordres en Conseil Vol. XXIX, p. 426.

Contracts of employment, etc.

5. (1) Every contract of employment the proper law of which is the law of the Island to which the transferor company is a party shall be construed and have effect on and from the appointed day as if the transferee company had been a party thereto instead of the transferor company and as if for any reference (however worded and whether express or implied) to the transferor company there were substituted a reference to the transferee company and employment with the transferor company and the transferee company under any such contract shall be deemed for all purposes to be a single continuing employment.

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

(3) No provision of this Law shall operate so as to prejudice or otherwise affect the rights or benefits of any former or current officer or employee of the transferor company under any existing scheme.

Evidence of transfer and vesting.

6. (1) The production of this Law and any Ordinance under it shall, for all purposes, be conclusive evidence of the transfer to, and vesting in, the transferee company of the 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 transferee company, 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 the transferor company immediately before the appointed day, whether alone or jointly with any other persons, shall be sufficient evidence that the interest of the transferor company in that property has been transferred to and vested in the transferee company, alone or jointly, under this Law; and

- (b) where there is any other transaction by the transferee company on or after the appointed day in connection with, or in relation to, any property or liability which is property or a liability of the transferor company 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 the transferee company has full power and authority for that transaction as if the property or liability had been transferred to and vested in it under this Law.

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

- (a) any document made or executed on or after the appointed day whereby the transferor company, 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 as effective as if that property had been conveyed, transferred or registered by the transferee company; and

- (b) where there is any other transaction by the transferor company on or after the appointed day in connection with, or in relation to, any property or liability which is property or a liability of the transferor company immediately before the appointed day, that transaction shall be as effective as if it had been a transaction by the transferee company.

(4) A certificate given by or on behalf of the transferee company, whether given before, on or after the appointed day, that any property or liability of the transferor company specified in the certificate will transfer and vest, or has transferred and vested, as the case may be, to and in the transferee company under this Law shall be conclusive evidence for all purposes of the fact so certified.

(5) Nothing in this section affects the liability of the transferor company or the transferee company 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.

Evidence: documents.

7. All documents which would, before the appointed day, have been evidence in respect of any matter for or against the transferor company shall on and from the appointed day be admissible in evidence in respect of the same matter for or against the transferee company.

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

8. (1) In this section "**bankers' books**" shall be construed in accordance with section 1(1) of the Bankers' Books Evidence (Guernsey) Law, 1954^c (hereinafter called "**the 1954 Law**").

(2) On and from the appointed day the 1954 Law shall apply to the bankers' books of the transferor company transferred to, and vested in, the transferee company by virtue of this Law, and to entries made in those books before the appointed day, as if such books were books of the transferee company.

(3) For the purposes of section 6 of the 1954 Law, bankers' books so transferred to, and vested in, the transferee company shall be deemed to have been the ordinary books of the transferee company 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 notwithstanding that the transferee company may not have been in existence at that date.

Savings in respect of transfers and vesting of property.

9. The transfer and vesting of any property or of a liability by virtue of this Law shall not -

- (a) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of or dealing with property or of an interest in property for the purposes of any enactment other than this Law or any provision in any instrument, contract

^c Ordres en Conseil Vol. XVI, p. 24; Vol. XXVIII, p. 431; and No. XIII of 1994.

or order of any court concerning that property or that interest; or

- (b) give rise to any forfeiture; or
- (c) invalidate or discharge any contract, security or other thing; or
- (d) require further registration in respect of any security; or
- (e) cause or enable the benefit of any contract, permission, licence or privilege enjoyed by the transferor company or the transferee company to be lost or surrendered or otherwise affected, or require the disposal by the transferor company or the transferee company of any interest, otherwise than as provided in this Law; or
- (f) relieve any person under an obligation to the transferor company of a corresponding obligation to the transferee company; or
- (g) 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 company or the transferee company is a party or is bound; or
- (h) allow any party to a contract to terminate that contract

when he would not otherwise have been able to terminate it; or

- (i) operate so as to merge any leasehold interest in the reversion expectant on it; or
- (j) entitle any party to any contract to which the transferor company or the transferee company is a party 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
- (k) cause the imposition of any greater or lesser obligations on any party to any contract to which the transferor company or the transferee company is a party when that greater or lesser obligation would not otherwise have been imposed.

Costs of Law.

10. 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 the transferee company.

Interpretation.

11. (1) In this Law, unless the subject or context otherwise requires -

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

"appointed day" means the day of registration of this Law on the records of the Island;

"contract" includes any agreement, deed, transaction, arrangement or understanding, whether or not conditional or in writing and whether or not governed by the law of the Island;

"customer" includes any person having an account or other dealing or a contract with the transferor company;

"data protection principles" has the same meaning as in Schedule 1 to the Data Protection (Bailiwick of Guernsey) Law, 1986^d;

"document" means any thing in which information of any description is recorded;

"enactment" includes an Order in Council, a Law, an Act of Parliament, an Ordinance and any order, rule or regulation made under any enactment;

"excluded property" means all the real property owned by the transferor company but not any real property held by or in favour of the transferor company as security for the payment or discharge of any liability;

"existing" means existing, outstanding or in force immediately before the appointed day;

^d Ordres en Conseil Vol. XXIX, p. 426.

"Island" means the island of Guernsey;

"liability" includes a duty and an obligation of any description (whether present or future, actual, contingent or prospective);

"property" means property and assets of every description and includes property and assets held on trust or in a fiduciary capacity and securities, rights, benefits and powers of every description;

"scheme" means any pension or superannuation fund or scheme or any similar fund or scheme and the trust deeds, declarations of trust, agreements, rules, regulations or other instruments constituting or relating to the same;

"security" includes a bond, mortgage or charge (in each case whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), security interest, assignment by way of security, indemnity, right of set-off, right of compensation, hypothèque, flawed asset arrangement, title retention, undertaking or other means of securing payment or discharge of a debt or liability 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;

"States" means the States of Guernsey;

"transferee company" means Ansbacher (Channel Islands) Limited;

"transferor company" means Ansbacher (Guernsey) Limited;

"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); executor of the will, or administrator of the estate, of a deceased person; judicial trustee appointed by order of any court; attorney for another person; or any person acting in a fiduciary capacity;

"undertaking" means the business and all property and liabilities of the transferor company of whatever nature other than the excluded property;

"will" includes a codicil and any other testamentary writing.

(2) Any reference in this Law to property or liabilities of the transferor company is a reference to property or liabilities wherever they are situated or arise and whether or not they are capable of being transferred or assigned by the transferor company and whether the transferor company is entitled or subject to them under the law of the Island or under the law of any country or territory outside the Island.

(3) Any reference in this Law to any other enactment shall, except when the context otherwise requires, be construed as including a reference thereto as amended, repealed or replaced (with or without modification), extended or applied.

Citation.

12. This Law may be cited as the Ansbacher Group (Guernsey) Law, 2001.