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THE HIGH COURT

REVENUE

[2006 No. 13 M.C.A]

IN THE MATTER OF SECTION 908 OF THE TAXES CONSOLIDATION ACT, 1997,

AS SUBSTITUTED BY SECTION 207 (i) OF THE FINANCE ACT, 1999.

BETWEEN

PAUL WALSH

APPLICANT

AND

NATIONAL IRISH BANK LIMITED

RESPONDENT

Judgment of Mr. Justice William McKechnie delivered on the 4th day of May, 2007

Background:

1. In the Revenue Commissioners there is a branch known as the Investigations and Prosecution Division and within that, a section described as the Offshore Assets Group was established in 2001. The essential purpose of this group was to identify, and thereafter to deal with Irish residents, who might have sought to evade their tax liability by the use of offshore accounts. Mr. Paul Walsh, the applicant in this Notice of Motion, is a Principal Officer with the Revenue Commissioners and is attached to this Offshore Assets Group. As an Authorised Officer for the purposes of the statutory provisions hereinafter mentioned and having duly obtained the consent in writing of a Commissioner, the said Mr. Walsh caused the within application to issue on the 24th February, 2006.

2. The respondent is the National Irish Bank Limited, which, as a licensed Banker, is authorised to conduct business in this State. In 1991 it opened a Branch in the Isle of Man and provided *inter alia* deposit facilities until December 2002, when it surrendered its banking licence to the Isle of Man authorities. The remaining deposits at that time were closed, either by way of transfer to other banks or by cheque to the relevant customer. It also has a sister bank, Northern Bank Limited which is the biggest retail bank in Northern Ireland. At one time Northern Bank (IOM) Limited, which incidentally operated the respondent's branch in that jurisdiction under a service agreement, was also an associate of the respondent company. Both National Irish Bank and Northern Bank Limited were acquired by the Danish Banking group, Danske, in March, 2005. Today they remain wholly owned subsidiaries of that group.

3. As part of its ongoing investigations into the identification of all Irish residents, who might have used offshore accounts for the purposes of tax evasion, the Chairman of the Revenue Commissioners held a series of meetings with various financial institutions in December, 2003. Mr. Frank Daly requested each of these institutions, through their Chief Executive Officers, to fully co-operate with the formal investigation which was then scheduled to commence at the beginning of April, 2004. In the intervening period provision was made for any taxpayer to make a voluntary disclosure of 'default liability' relative to such offshore accounts. Each of the institutions in question, including the respondent bank, agreed to offer such co-operation as requested.

4. By reason of certain information which had been received by the Commissioners, the Offshore Asset Group came to the view that in furtherance of this investigation, the Revenue should use the powers contained in s. 908 of the Taxes Consolidation Act, 1997 as substituted by s. 207 (i) of the Finance Act, 1999. One of the banks in respect of which it sought to invoke these statutory provisions, was the respondent. As a result, the present application was commenced by way of a Notice of Motion dated the 24th February, 2006.

5. In that Motion, Mr. Walsh who ultimately of course is acting on behalf of the Revenue Commissioners, seeks an order from this court directing the respondent to furnish the information, documentation and particulars set forth in an Appendix to his grounding affidavit sworn on the 24th February, 2006. That Appendix has three separate paragraphs, namely (A), (B) and (C). The first two are addressed respectively to Northern Bank Limited and Northern Bank (IOM) Limited. Having had no objection to supplying the information requested in these paragraphs, the President of this Court by order dated the 27th March, 2006, directed the respondent to so do. That order, which was made with the consent of the bank, has not been challenged by any third party and accordingly remains operative to this day.

Information Requested:

6. The respondent bank however does have an objection to furnishing what has been requested at paragraph (C) of this Appendix. That particular request seeks an order "…that…in relation to persons holding deposits with the Isle of Man branch of National Irish Bank, the respondent do make available for inspection by the applicant, from books, records or documents maintained by the respondent or from books, records or documents to which the respondent has access, the following information:-

> (C) A schedule, whether in electronic or paper form, of all deposit holders with an address in the State having accounts with the Isle of Man branch of National Irish Bank where the balance on the account exceeded £5,000 or €6,350 at any time setting out:
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> (1) The name and address of the account holder,
>
> (2) The date the account was opened and the amount of the opening balance,
>
> (3) The maximum balance on the account over the life of the account, and
>
> (4) If applicable the date of closure of the account."

A time schedule for the supply of this information is then set forth.

In essence it is claimed by National Irish Bank that this Court has no jurisdiction to make the order as sought. It makes this submission on the basis that the target of the order relates to a branch of the respondent bank which was then located in the Isle of Man and not to a branch which was or is resident in this jurisdiction.

Section 908:
7. Section 908 of the Taxes Consolidation Act, 1997, as substituted by s. 207 (i) of the Finance Act, 1999 (hereinafter referred to as s. 908 or s. 908 of the 1997 Act) reads as follows:-

> "908 – (1) In this section –
>
> 'judge' means a judge of the High Court,
>
> 'a taxpayer' means any person including -
>
> (a) a person whose identity is not known to the authorised officer, and a group or class of persons whose individual identities are not so known, and
>
> (b) …
>
> (2) An authorised officer may, …make an application to a judge for an order requiring a financial institution, to do either or both of the following, namely –
>
> (a) to make available for inspection by the authorised officer, such books, records or other documents as are in the financial institution's power, possession or procurement as contain, or may (in the authorised officer's opinion formed on reasonable ground) contain information relevant to a liability in relation to a taxpayer,
>
> (b) to furnish to the authorised officer such information, explanations and particulars as the authorised officer may reasonably require, being information, explanations and particulars that are relevant to any such liability,
>
> and which are specified in the application.
>
> (3) An authorised officer shall not make application under subsection (2) without the consent in writing of a Revenue Commissioner, and without being satisfied –
>
> (a) that there are reasonable grounds for suspecting that the taxpayer, or, where the taxpayer is a group or class of persons, all or any one of those persons, may have failed or may fail to comply with any provision of the Acts,
>
> (b) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax (having regard to the amount of a liability in relation to the taxpayer, or where the taxpayer is a group or class of persons, the amount of a liability in relation to all or any one of them, that arises or might arise from such failure), and
>
> (c) that the information –
>
> (i) which is likely to be contained in the books, records or other documents to which the application relates, or
>
> (ii) which is likely to arise from the information, explanations and particulars to which the application relates,
>
> is relevant to the proper assessment or collection of tax.
>
> (4) …
>
> (5) Where the judge, to whom an application is made under subsection (2), is satisfied that there are reasonable grounds for the application being made, the judge may, subject to such conditions as he or she may consider proper and specify in the order, make an order requiring the financial institution –
>
> (a) to make available for inspection by the authorised officer, such books, records or other documents, and
>
> (b) to furnish to the authorised officer such information, explanations and particulars,
>
> as may be specified in the order.
>
> (6) …
>
> (7) …
>
> (8) …
>
> (9) …"

8. On the evidence laid before this Court, I am satisfied that the various conditions or requirements specified in sub-s (3) of s. 908, have been satisfied in this case. In particular there is evidence confirming, that the applicant, as an Authorised Officer, has received the written consent of a Revenue Commissioner to make this application; that there are reasonable grounds for suspecting that a taxpayer, (as so defined), may have failed or may fail to comply with a provision of the Taxes Consolidation Act, as amended; that such failure is likely to have had or may lead to serious prejudice to the proper assessment or collection of tax and that (subject to the core point in the case) the information sought is likely to be contained in the books, records and other documents the subject

matter of this application.

In fact no issue has been taken on the Revenue's ability to satisfy the court with regard to these matters. Instead the point of objection is more fundamental and is jurisdictional based.

Evidence of Isle of Man Law:
9. Before outlining the submissions made on this application, there has been an exchange of correspondence between the parties which should be referred to. The first letter dated the 7th November, 2005, is from Messrs Matheson Ormsby and Prentice, sent on behalf of the respondent bank to the Revenue Commissioners. Attached to this, was a Letter of Advices, received from a firm of Advocates, Solicitors and Attorneys based in the Isle of Man. This letter offered an opinion on Manx Law relative to the issues in this case. The Revenue responded on the 7th February, 2006.

10. Messrs Mann and Partners, in their letter of 2nd November, 2005, advised as follows:-

> (1) Every bank owes an obligation of confidentiality to its customers – see *Tournier v. National Provincial and Union Bank of England* [1924] 1 KB 461. That obligation however is not absolute and may be derogated from in the following circumstances:-
>
> > "(a) where disclosure is under compulsion of law;
> >
> > (b) where there is a duty to the public to disclose;
> >
> > (c) where the interests of the bank require disclosure;
> >
> > (d) where the disclosures is made by the express or implied consent of the customer".
>
> (2) Apart from the exception identified at subpara. (a) above, it is clear that none of the other headings have any potential application to this case. It is acknowledged that in principle a competent court can compel a bank to disclose information about a customer, and where such information is in fact furnished, the bank will not be in breach of its obligation of secrecy by reason of the exception specified at subpara. (a). The question then becomes "does an order of the Irish High Court suffice where the branch is based in the Isle of Man?"
>
> (3) A branch of a foreign bank which is located in the Isle of Man is treated as a separate entity from its foreign parent because of its location within the Manx jurisdiction. The English Court of Appeal so decided in *R. v. Grossman* (1981-83) MLR 20 and (1981) 73 Cr. App. Rep 302. Accordingly if a bank so located should comply with a foreign order for disclosure, it may expose itself to an action for breach of confidentiality. The publication, "Capital Taxes and Estate Planning in Europe". (Lyons – Rel. 22 ed. 22nd November, 2000 at 82), in which Advocate Beckett wrote the section on Isle of Man law, was referred to in this regard. The relevant passage reads "Foreign courts cannot compel a bank licensed in the Isle of Man to reveal details about his customers. An application must be made to the High Court of Justice in the Isle of Man pursuant to the Bankers Books Evidence Act, 1935. Such assistance will only be considered in relation to legal proceedings brought within the Isle of Man and not to foreign proceedings". This quotation was approved by Deemster Cain in, *In the matter of the Petition of Blayney and Grace,* (2001-03 MLR 13).
>
> (4) Accordingly an order from the Irish High Court requesting a bank to disclose information about its Isle of Man branch need not be complied with. An order from an Isle of Man court is necessary for this purpose.
>
> (5) Indeed, an injunction would "potentially" be obtainable from a Manx Court, to prohibit the disclosure of any information which might be so ordered by the High Court in Ireland. The case of *FDC Co. v. Chase Manhattan Bank* (Unreported but noted in Modern Banking Law Ellinger 1st ed. 109) was cited as an authority for this proposition.
>
> (6) In conclusion an order from this jurisdiction is not sufficient to afford the protection required. Only an order from an Isle of Man Court will suffice in this regard.

11. In its response to this letter the Revenue Commissioners on the 7th February, 2006, stated as follows:-

> (1) The proposition advanced by Mann and Partners (para. 10(3) above) is in its view "somewhat unusual", given the fact that ordinarily, certainly under Irish law, a company has but a single legal personality, which in the respondent's case is subject to the jurisdiction of this court. In any event the advices given merely seek to convey that the bank "need" not comply with any such order under Manx law, but do not suggest that the branch, or the manager of the branch, would not be obliged to comply if such directions were given to them by the Board of Directors of the Company itself.
>
> (2) As the bank had relinquished its licence to carry on business in the Isle of Man in 2002, it could not be said that it has maintained within that jurisdiction any branch of the respondent's since that date.
>
> (3) The letter of advices does not seem to suggest that the documents and information sought, are other than within the possession, power and procurement of the respondent bank. Even however if there was no obligation under Manx law to comply with an order of the Irish High Court, the advices do not state that the Irish company would be "unable" to comply with such an order. Moreover, if the High Court should issue such an order, it would seem unlikely that, the respondent bank would seek to frustrate that, by invoking the jurisdiction of the Courts of the Isle of Man. That possibility should therefore be discounted.
>
> (4) The application now brought by the Revenue Commissioners, has been instituted in an Irish Court under Irish legislation. It affects an Irish financial institution and deals only with customers who have an Irish address and who in all probability are or should be Irish taxpayers. Consequently in all material respects the facts of the application are "connected solely" with this jurisdiction and not with the Isle of Man. Accordingly "on the advice of Counsel" it is suggested that under international law any order of the Irish Court should prevail.
>
> (5) In conclusion therefore the Revenue Commissioners reject the advices contained in the letter from Mann and Partners and maintain their position that this court has jurisdiction to issue the orders as they now seek."

Submissions of Revenue Commissioners:
12. It is claimed on behalf of the Revenue that s. 908 of the 1997 Act, confers jurisdiction on the High Court to issue the type of order therein mentioned and to do so against any and every financial institution (as defined) where the base records are within the possession, power or procurement of such institution. According to the applicant, there is no express restriction, confining the exercise of this jurisdiction to the territory of Ireland and, given the clear purpose of the legislation in question, none should be implied. That purpose is designed to enable the Revenue to obtain information regarding potential tax evaders, when otherwise, for example by reason of the common law duty of confidentiality; such information may not be available. It is therefore asserted that the Act has extra territorial application, although the Revenue strongly argues that what it seeks in this motion does not invoke that principle. All Mr. Walsh prays for is an order which is designed in its entirety, to have domestic effect only. This results from the fact that the respondent bank is incorporated in Ireland and that it can supply the information, and produce the documents, within this jurisdiction. Accordingly whilst s. 908 is not so confined, the facts of this case relate to our jurisdiction only and do not extend further or beyond that.

13. Counsel on behalf of the applicant then referred to the decision of Carroll J. in *Chemical Bank v. McCormack* [1983] I.L.R.M. 350, as being the only Irish authority in which the issue of a statute having extra territorial effect was raised. On the facts, the learned judge refused to give the plaintiff permission to inspect and take copies, "at" the New York branch of A.I.B, of accounts held in two Dublin branches and in the New York branch of that bank. She so refused on a number of grounds, one of which was that a permissive order might give rise to a conflict of jurisdiction between Ireland and the State of New York. Such a conflict in her view "should be avoided in the interest of the comity of the courts". This type of problem it is said does not arise in the instant case, as the order sought is addressed to an Irish entity, which can perform its terms within the territorial jurisdiction of this State. In the absence of any injunction from an Isle of Man Court, it is submitted that there is no legal impediment on the respondent from obeying the orders sought.

14. The case of *R. v. Grossman* was then referred to with the facts being fully outlined to this court. As I will summarise these later in my judgment, (para. 43) it is sufficient presently to state, that the Court of Appeal in England, knowing that Manx law was against it, refused to make an order under s. 7 of the Bankers Books Evidence Act, 1879 which would have enabled the Revenue Commissioners to take copies in London of an account held in the Isle of Man branch of Barclays Bank. The courts decision was made so as to avoid a conflict of jurisdiction between England and the Isle of Man. The applicant in the present case seeks to distinguish *Grossman*, in that by the time of the courts decision an injunction had been obtained from the Isle of Man Court preventing disclosure of the information, and secondly in that any connection which the facts of *Grossman* had with the jurisdiction of England was incidental. The case therefore does not govern the instant circumstances.

15. Mr. Walsh further claims that in the exercise of any discretion which might be vested in this court, it was important to bare in mind as previously stated, that the respondent bank, whose head office is in Ireland, is a legal entity under Irish law, that the taxpayers who's account details are sought are Irish citizens, and that most likely any movement on such accounts may have had an instruction input from this jurisdiction. Furthermore if the suspicions of the Revenue Commissioners are correct, such persons or someone or more of them, may have evaded and/or may continue to evade their taxation responsibilities. Accordingly these facts clearly demonstrate that the true and real connecting jurisdiction is Ireland and not that of the Isle of Man. Therefore any discretion should be exercised in one way only.

16. In addition it is submitted that even if the proper law of the banking contract is that of the Isle of Man, (which is not accepted) and even if as a result the courts of that jurisdiction could grant injunctive relief, nonetheless, if one was to truly respect the notion of comity, the self restraint is on the Isle of Man courts and not the courts of this jurisdiction. Moreover *Libyan Arab Foreign Bank v. Bankers Trust Co* [1989] Q.B. 728 is not authority for the proposition that the proper law of such a contract is where the account is held: rather the point decided in that case was that even if compliance with a foreign order would expose the bank to an allegation of illegality, that, in itself, would not prevent the foreign court from making such an order. In any event there is a safeguard in the instant case in that if this court should grant the requested order, it would also in accordance with practice, defer its implementation for a period of time during which any effected account holder could apply to the Isle of Man courts for an injunction if he or she saw fit. Even though it is claimed that no such injunction would issue, nevertheless this procedural availability offers a further safeguard to the respondent and would absolve it from any potential liability to its former account holders. The reality therefore is that this concern of the Bank, regarding potential litigation on the question of confidentiality, is at least premature and most probably more illusory than real.

In conclusion the Revenue argues that there is every justification for granting the order as sought and that the matters raised by way of objection on behalf of the respondent bank, are not sustainable.

Submissions of the National Irish Bank:
17. In its submissions National Irish Bank indicates that it is willing to cooperate with the Revenue Commissioners but sees a direct conflict between this and its obligations of confidentiality to its customers. The scope and extent of these obligations were authoritatively set forth more than eighty years ago in *Tournier v. National Provincial and Union Bank of England* [1924] 1 KB 461, a case which remains good law to this day. The difficulty which arises with regard to the request set forth at para. "C" of the Appendix to Mr. Walsh's affidavit, is that the information sought relates to accounts held in the Isle of Man and accordingly the account holders are entitled to the protection of Manx law. On the advices received by it, the bank is informed that this court has no jurisdiction to make the order as sought and secondly that compliance with such an order would not absolve it from its duty of confidentiality to its former account holders.

18. It is claimed by the respondent that the governing law of a contract between a banker and its customer is that of the country where the branch at which the account is held is located. Dicey and Morris, Conflict of Laws, 13th ed., para. 33.296 was cited in support as was Paget, on the Law of Banking 12th ed., at para. 7.17.

19. In addition the respondent also makes reference to the case of *Libyan Arab Foreign Bank v. Bankers Trust Co.* [1989] Q.B. 728, "*The Bankers Trust case*". In that case Staughton (J.), having endorsed the Court of Appeal's decision in *R v. Grossman* (1981) 73 Cr. App. R. 302 - to the effect that a branch of a foreign bank should be treated separately from its head office - came to the conclusion that there was but one contract between banker and customer, even where that customer had a number of accounts in different jurisdictions. In such circumstances the learned judge held that the relationship was governed (on the particular facts) in part by English law which applied to a call account in London, and in part by the law of New York which applied to a demand account held there. Accordingly it was asserted on this authority that the common law position is clear-cut and is, that the governing law between banker and customer is that of the country where the account is held.

20. This issue was again considered in two judgments given in the *Libyan Arab Foreign Bank v. Manufacturers Hanover Trust Co.* [1988] 2 Lloyd's Rep 494 and (No. 2) [1989] 1 Lloyd's Rep. 608, ("*The Hanover Trust case*"), where, as in the *Bankers Trust* case, the plaintiff had accounts with two of the defendants branches, one located in New York and one in London. Although Hirst, J. concluded, that in the particular circumstances there were in fact two contracts and not simply one, and that the proper law of the London bank account was English law, he nonetheless went on to express a view, that if contrary to this primary finding there was but a single contract, he would in principle, favour a split law approach to the accounts held in different jurisdictions. In essence he endorsed what Staughton J. had decided in the *Bankers Trust* case.

21. Consideration must also be given to the Contractual Obligations (Applicable Law) Act 1991 which applied the force of Irish domestic law to the Convention on the law applicable to contractual obligations signed at Rome on the 19th June, 1988, commonly known as the "Rome Convention" 1980. The effect of that Convention on the principles outlined in the *Bankers Trust* case and the *Hanover Trust* case was considered by the English courts in *Sierra Leone Telecommunications v. Barclays Bank* [1998] 2 All ER 821. In summary Creswell J., held that the Convention, which was incorporated into the law of the United Kingdom in 1990, did not effect the overriding principle that the proper law of a bank account is the law of the country where that account is kept. Whilst there is no such comparable authority in this jurisdiction, the respondent bank nevertheless submits that this court should follow the reasoning in *Sierra Leone* and should conclude that the proper law of the accounts in question is Isle of Man law. Reference has also be made to the High Court's decision in *Cripps Warburg Limited v. Cologne Investment Company Limited* [1980] I.R. 321, and the Supreme Court's decision in *Northern Bank Limited v. Edwards* [1985] I.R. 284.

22. Finally it is submitted that there are also several circumstances which clearly establish a close connection between the branch business of the respondent's bank in the Isle of Man and Manx law. That being so the decision of the court in *Re Blayney* is significant in that even the holder of such an important office as inspector, (appointed by the High Court in Dublin to investigate matters concerning alleged tax evasion by the wrongful use of foreign bank accounts), was obliged to seek account details by way of an application to the Isle of Man courts. In all of these circumstances, it is submitted that this court should not make the order as requested.

Decision:
23. There is no doubt but that it is an implied term of any contract between a banker and its customer that the former will not divulge to third parties, without the express or implied consent of the latter, the state of his account or the amount of his balance, the securities offered and held, the extent and frequency of transactions or indeed any information acquired by the bank during, or by reason of, its relationship with the customer. The seminal authority for this proposition is the case of *Tournier v. National Prudential and Union Bank of England*, [1924] 1 K.B. 461. That case has been accepted and virtually without qualification has been applied in numerous other decisions since then including *Re State of Norway's Application* [1989] 1 All E.R. 746, *Lipkin Gorman v. Karpnale* [1992] 4 All E.R. 409 and *Taylor, Trustee Saving Bank of Wales and Border Counties v. Taylor* [1989] 3 All E.R. 563. That such a duty exists, whether it is based on an implied term or underpinned by public interest considerations, was recognised in this jurisdiction by the Supreme Court in *National Irish Bank Limited v. Radio Telefis Eireann* [1998] 2 I.R. 465 at p. 494. Therefore there can be no doubt about the existence of this principle of law.

24 This obligation of secrecy is not however absolute and must yield to certain countervailing circumstances, such as where the banker is compelled to disclose by reason of either statute law or court order, or where there is a public duty of disclosure or where it is in the bank's own interest to so disclose. These qualifications were originally set out in the *Tournier's* decision with the description so given in that case remaining good law to this day. At p. 472 of the report Banks L.J. said:-

> "In my opinion it is necessary in a case like the present to direct a jury what are the limits, and what are the qualifications of the contractual duty of secrecy implied in the relation of bank and customer. There appears to be no authority on the point. On principle I think that the qualifications can be classified under four heads:
>
> (a) where disclosure is under compulsion of law;
>
> (b) where there is a duty to the public to disclose;
>
> (c) where the interests of the bank require disclosure;
>
> (d) where the disclosure is made by the express or implied consent of the customer."

It should be noted that these qualifications are not mutually independent and that those mentioned at sub-paras. (a), (c), and (e) must give way, where the circumstances so demand, to the overriding duty of disclosure in the public interest. *A-G Guardian Newspapers Ltd.* (No. 2) [1988] 3 All E.R. 545. An example of the latter would be an attempt to uncover fraud or detect crime. See *Pharaon v. Bank of Credit and Commerce International* [1998] 4 All E.R. 455 and the judgment of Rattee J., which was one of many such judgments, arising out of what has been described as the largest bank fraud in world's history. Where a conflict arises between the duty of confidentiality on the one hand, and a duty to disclose in the public interest on the other, the correct approach is that as set out by Kelly J. in *Cooper Flynn v. Radio Telefis Eireann* [2000] 3 I.R. 344, where at p. 351 the learned judge said:-

> "It is therefore clear that a duty and a right of confidentiality exists between a banker and his customer. That is not to be equated with an entitlement to any form of legal privilege. The duty and right of confidentiality is not absolute and must in an appropriate case be weighted and balanced as against countervailing rights, obligations and entitlements."

It should be stressed however that no issue arises in this case which would require the court to embark upon the type of balancing process as mentioned by Kelly J.

25. The above principles do not address the temporal limits (if any) which apply to this duty. It could not be the case that once an account is closed the duty ceases. That would entirely undermine the commercial significance of the rule. It seems to me that once information is obtained by virtue of the parties relationship, then the same is protected unless one of the specified exceptions above mentioned can be invoked. See *Tournier* at pp. 473-474 and 485. This in my view is the minimum margin which is necessary. As the entirety of the information requested on this application was undoubtedly both created and acquired during the lifetime of these accounts, I would firmly reject the Revenue suggestion that once the branch in the Isle of Man closed, the duty ceased. This proposition in my view is unsustainable and could in certain critical circumstances lead to an erosion of public confidence in the sector. It would mean that every institution offering banking facilities would be free to disclose details of any account, even in such benign circumstances as a parent company closing a small branch in a country town. That could not be the law. In my opinion therefore the respondent bank remains, as of now, under a duty of confidentiality to its former account holders in the Isle of Man.

26. As a general rule the proper law of a banking contract, which relates to an account, is governed, in the absence of agreement between the parties, by the place where that account is held. See *X-A.G. v. A Bank* [1983] 2 All E.R. 464. This rule has its foundation on the bank's promise to repay and to do so at the branch where the account is kept. See *Joachimson v. Swiss Bank Corporation* [1921] 3 K.B. 110 and in particular the judgment of Atkin L.J. at p. 127 of the report. In Dicey and Morris, on the The Conflict of Laws, 13th Ed., at para. 33.296, the authors succinctly outline what the position is. They state:-

> "At common law, there was clear authority for the proposition that the law applicable to the contract between banker and customer as constituted by the holding of an account was governed by the law of the country in which the branch at which the account was kept was situated."

Paget's Law of Banking, 12th Ed. 2002, echoes this view but in addition suggests that a similar test is appropriate under the Rome Convention. (See para. 21 above). At para. 7.17 states:-

> "Accordingly, in the absence of an express choice of law, the proper law of the contract between the bank and its customer is generally the law of the place where the account is kept, this being the law with which the contract has its closest connection. This is the test at both common law and under art. 4(1) of the Rome Convention which …
>
> Where a customer maintains only one account with a bank, the court is likely to require solid grounds for displacing the law of that place as the proper law. Where a customer maintains two or more accounts with branches of a bank in different jurisdictions, the position is more complex."

27. It is also worth noting the following comments of Staughton J. in *The Bankers Trust case*, where, at p. 747 of the report he states:-

> " … I do not set them out, [various rival contentions] for they are fairly evenly balanced, and in my view do little or nothing to diminish the importance of the general rule, that the proper law of a bank's contract is the law of the place where the account is kept. Political risk must commonly be an important factor to those who deposit large sums of money with banks; the popularity of Swiss bank accounts with some people is due to the banking laws of the Cantons of Switzerland. And I have already found, on the evidence of Bankers Trust, that the Iranian crisis was at the back of everybody's mind in 1980. Whatever considerations did or did not influence the parties to this case, I believe that banks generally and their customers normally intend the local law to apply. So I would require solid grounds for holding that the general rules does not apply, and there do not appear to be any such grounds in this case."

These comments were fully supported by Hirst J. in the *Hanover Trust* case. In fact the learned judge went further and said that the rule is of the greatest commercial importance, and, for the reasons Mr. Cresswell gave, there is a risk of grave difficultly and confusion if some other law is the governing law. Indeed, I would go so far as to interpret Mr. Justice Staughton's requirement of "solid grounds" as connoting a very severe test."

28. This principle of the common law is one which I fully accept and is one which in my view continues to apply even in today's world of high speed technology and communication. Whilst hardcopy bankers' books with handwritten entries, may no longer be physically kept at, and certainly not kept at every branch of a bank, and as a result the word "kept" may require some adjustment, nevertheless the application of first principles still lead to the conclusion, that absent any agreement between the parties, an account is kept for this purpose where it has been established and where at the relevant time it so remains. This conclusion has the added attraction of coinciding with the views of the vast majority of people who would intend local laws to apply.

29. This particular point was also dealt with in the *Bankers Trust* case where the learned judge at p. 746 of the report said:-

> "In the age of the computer it may not be strictly accurate to speak of the branch where the account is kept. Banks no longer have no books in which they write entries; the have terminals by which they give instructions; and the computer itself with magnetic tape, floppy disc or some other device may be physically located elsewhere. Nevertheless it should not be difficult to decide where an account is kept for this purpose and it is not in the present case actual entries on the London account were as I understand it, made in London, albeit on instructions from New York after December 1980. At all events I have no doubt that the London account was at all material times kept in London."

30. For a substantial number of people this rule poses no difficulty; even for multiple account holders it may never become an issue. Provided the branch in question is located in the same jurisdictional territory as the head office then a single legal system of rules will apply. Difficulties only emerge where the subject account(s) is held in a branch(s) of a bank which is located in a territory different from that of its parent. In such circumstances an issue may arise as to what the proper law of the account(s) is.

31. As is evident from para. 27 above, this type of problem arose in both the *Bankers Trust* case and the *Hanover Trust* case, *supra*. In the first action the plaintiffs, a Libyan Bank had two accounts with the defendant, which was an American bank having its seat of office in New York. One account was a "call account" and was held at the defendant's London branch with the second account, a "demand account" being held at its New York branch. As a result of an executive order issued by the President of the United States, it was illegal under New York law, for Bankers Trust to deal with the Libyan Bank after 4.00 pm. on 8th January, 1986. No comparable order or legislation existed in the United Kingdom. Following a demand for payment on the London account, the defendant claimed that it would be impossible to make such payment without committing an illegal act in the United States. An issue thus arose as to the extent to which New York law could become effective in the United Kingdom and secondly, as to what was the proper law of the account held in the London branch of the defendant bank.

32. Having considered various submissions made by counsel on behalf of both parties, Staughton J., narrowed the choice of solution to either the existence of separate contracts in respect of each account or else one contract to cover both accounts but with two proper laws. The learned judge disliked the notion of two contracts referring to this approach as being "artificial and unattractive" and as being one lacking in logic and consistency. He accordingly came to the conclusion that there was but one contract which however had a split proper law within it. Having described this approach as somewhat unusual he nevertheless followed the authority cited and held that a contract could attract a proper law to one obligation and a different proper law to a further obligation. He concluded on this issue that the law of England applied to the London account. It was taken as virtually read that if the alternative approach had been favoured, namely the existence of two contracts, then a similar conclusion would inevitably have been reached with regard to the London account. Accordingly, this case is an authority for the proposition that the proper law of a banking contract, involving an account kept at a branch located in a jurisdiction different from that of the parent bank, is that of the former and not the latter.

33. The facts in the *Hanover Trust* case were very similar to those in the *Bankers Trust* case. That case also arose out of the same

executive order signed by the President of the United States on 8th January, 1986. By reason of this order the defendant corporation established in New York disputed its obligations to operate a number of accounts which the Libyan bank had with it. One such account was at a branch in New York and the second at a branch in London. The point of interest to us in the instant case, was the court's consideration of what the proper law was relative to the English account. Contrary to the dislike shown by Staughton J., for the notion of two contracts, Hirst J. came to the conclusion that on the specific facts before him, there were in fact two contracts between the parties. One, related to the New York account and the second related to the London account. Given this approach there was no issue but that the proper law of the London account was English law. In addition however the learned judge also offered an opinion on the assumption that there was but one contract between the parties. In such circumstances he would " … have held, following Mr. Justice Staughton's decision in the *Bankers Trust* case, that the proper law was split, with the proper law in relation to the English bank account being English law, and the proper law in relation to the New York bank account New York law." See p. 621 of the Report.

34. Although at first glance it might appear that there is a substantial difference of approach between the judgment in the *Bankers Trust* case and that in the *Hanover Trust* case I do not believe that this is necessarily so. Whilst Mr Justice Staughton did express a dislike for the concept of two contracts, a view not shared by Hirst J., nonetheless the latter, on the specific facts of the case before him came to the conclusion that in fact they were two contracts and so found. In essence the learned judge examined the entire circumstances as presented to him and concluded as a matter of contract law that there existed more than one legal arrangement between the parties. It is difficult to see how this approach could be criticised in principle. In fact it is quite common for business and commercial people to have multiple co-existing legal contact with the each other. I see no reason why in principle banking should be different. Indeed one might argue that the existence of two contracts makes it legally more acceptable to have a different proper law applying to each, rather than having to resort to the split law principle where only one contract exists. In any event it is in my view quite unnecessary for the purpose of this case to express any concluded views on this point. It is sufficient to recall that with either approach both judgments came to the conclusion that the proper law of a banking contract was that where the account was held, and this was so even if the parent company was subject to a different legal system. This must apply, a *fortiori*, where there are not multiple accounts but only one.

35. The above principles represent what the situation is at common law. Statute however has intervened in this area, in the form of Contractual Obligations (Applicable Law) Act, 1991. This Act, as previously stated, gives the force of domestic law to the Rome Convention, signed on 19th June, 1980. Articles 3 and 4 of the Convention, which are set out in the First Schedule to the Act read as follows:-

> "Article 3
>
> Freedom of Choice.
>
> 1. A contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract.
>
> 2. …
>
> 3. ….
>
> 4. …
>
> Article 4.
>
> Applicable law in the absence of choice.
>
> 1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a severable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country.
>
> 2. Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.
>
> 3. …
>
> 4. …
>
> 5. Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3, and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country."

36. As the *Libyan Arab Bank* cases both pre-date the incorporation into English law of the Rome Convention, the above principles of common law must now be reconsidered in the light of the 1991 Act. A similar, indeed almost identical exercise was carried out by Cresswell J., in *Sierra Leone Telecommunications v. Barclays Bank* [1998] 2 All E.R. 821. At p. 827, of the report the learned judge said:-

> "The basic rule under the convention is that in the absence of a choice of law, a contract is governed by the law of the country with which it is most closely connected: art 4(1). The rule is qualified by a number of rebuttable presumptions. It is presumed that the contract is most closely connected with the country where the party who is to effect 'characteristic

> performance' has its central administration. In the case of a bank account, such party will be the bank. However, if the contract is entered into in the course of that party's trade, the governing law will be that of the country in which the principal place of business is situated or, where the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated: art 4(2). As to bank accounts it seems to me that the principle established in the *Libyan Arab* cases is substantially unchanged. Performance, i.e. repayment of the sum deposited, is to be effected through the branch where the account is kept. It is the law of the country where the account is kept which governs the contract. This view appears to be consistent with that expressed in the Giuliano and Lagarda report (see O.J. [1980] C. 282, p. 21) which states that 'in a banking contract the law of the country of the banking establishment with which a transaction is made will normally govern the contract'? ..."

I respectfully agree with the conclusions above reached.

37. In my view the banking contract between the respondent bank and its customers, both at common law and under the Convention is much more clearly connected with the Isle of Man than it is with this jurisdiction. The branch in question could never have existed unless authorised by Manx Law: it could operate only in accordance with that law which means that the creation, maintenance and retention of records, accounts and information, of any and every account holder, was *inter alia* subject to such law. Access to and the operation of such accounts was likewise governed by that law. And of course of crucial significance is the fact that the accounts were opened, operated and kept in the Isle of Man. In addition there is no question but that repayment is the essence of the contract and that this obligation could only be legally enforced by an account holder in the Isle of Man. (See 2nd part of A. 4.2. of the Convention). Moreover the respondent states in its submissions (without contradiction) that the records of all transactions relative to the accounts were "at all times" created and maintained in the Isle of Man and this continued even after its banking licence was surrendered in 2002. Accordingly I cannot agree that the matters relied upon by the Revenue constitute "solid grounds" or much less pass the "severe test" so as to displace a rule of such commercial importance.

38. Furthermore there is a strong case for suggesting that by reason of the circumstances above outlined, the parties have demonstrated with reasonable certainty their agreed choice of law. To those circumstances I would add the following, namely that the respondent when offering its services in the Isle of Man and the account holders who availed of such services, both did so on the presumed understanding that the applicable law would be Isle of Man law and not the law of this jurisdiction. Otherwise it makes absolutely no sense for a person with an Irish address to open an account in the Isle of Man rather than in Ireland. As it is not suggested that these accounts were opened to facilitate the carrying on of a business, trade or profession, I can see no good reason to have an account, which is subject to Irish law, in an Isle of Man branch of an Irish bank. If the parties had ever been asked as to what jurisdiction governed the applicable law, both in my view would unquestionably have said the Isle of Man. Consequently I am of the view that both at common law and under the Rome Convention the proper law of the accounts held in the defendant's branch was Manx Law.

In addition although given in a different context, I believe that this conclusion is also supported by the Court of Appeal's decision in *R. v. Grossman*, a case which I consider in more detail at para. 42 *infra.*

39. The next issue which I must deal with, is the extent and application of s. 908 of the 1997 Act. By the word "extent" I mean the geographical area within which the section is law; that is the territory throughout which the provisions of the section form part of its *corpus juris*. So defined, an Irish Act cannot be law outside the area of the Oireachtas' jurisdiction. This is so because such outside areas, must belong to some other sovereign power or else be homeless as, for example, the high seas. Of course such an Act may become binding in another State, either by virtue of some international treaty, convention or law or else by that other State itself adopting such an Act. (See p. 276 of Bennion Statutory Interpretation 4th Ed). This method of incorporation is not however relevant to this case.

40. The "application" of an Act is different from its "extent" or scope. The former relates to the persons and the subject matter concerned with the Act's operation. Sometimes there may be an express statutory provision identifying the Act's parameters in this regard. A slight legislative variation can be found in some Acts, such as the Central Bank and Financial Services Authority of Ireland Act 2003 where the Authority is given powers to "perform its functions … both within the State and elsewhere". On many occasions however the Act is silent in this respect. No difficulty arises in respect of people who are physically within the relevant jurisdiction, it being simply a matter of domestic interpretation to see whether or not the Act in question applies to such persons. The situation is different however where the individual in question is ordinarily resident outside of that jurisdiction. In such cases there is a presumption that in the absence of a contrary intention, express or implied, the statutory provisions do not apply to such persons. In *Chemical Bank v. McCormack* [1983] ILRM 350, Carroll J. quoted with approval the following passage from Maxwell on Interpretation of Statues (1946 Edition p. 149)

> "In the absence of an intention clearly expressed or to be inferred from its language or from the object, subject matter or history of the enactment, the presumption is that parliament does not design its Statues to operate on its subjects beyond the territorial limits of the United Kingdom". See also para. 1319 of Halsbury 4th Ed. Vol. 44, and *R. v. West Yorkshire Coroner* [1983] 1 QB 335 at 358.

41. At p. 306 of Bennion, *supra*, the author offers the following explanation for this presumption. He states "One obvious reason for restricting the apparent width of the literal meaning of an Act is 'a principle of comity which confines its operation within the territorial jurisdiction of the enacting state'. Under the general presumption that the legislature does not intend to exceed its jurisdiction, every statute is interpreted, so far as its language permits, so as not to be inconsistent with the comity of nations or the established rules of international law, and the court will avoid a construction which would give rise to such inconsistency unless compelled to adopt it by plain and unambiguous language? This is one of many instances where the express words of an Act are taken to be subject to implications altering their literal meaning. The rules of comity and international law reflect the obvious fact that it is for each territorial government to regulate the inhabitants and affairs of its own territory."

42. I respectfully adopt the above passages as correctly describing what the law is. The reference to "a principle of comity" includes the mutuality of respect which each judicial system affords to another. Therefore if the particular circumstances of any given case should require it, the court of the country whose jurisdiction is being invoked, should exercise self restraint so as to avoid the possibility of a conflict between that jurisdiction and its foreign neighbours.

43. No authority has been produced on the 'application' of s. 908 of the 1997 Act, and given the representative capacity of the applicant I can safely assume that no such authority exists. I must therefore determine whether, by reference to the principles of law above outlined, the section has extra territorial effect by application. In my view the section has no such effect. It seems to be that the Oireachtas has not expressly claimed and has not inferentially sought to apply this statutory provision to any subject matter or person outside of this jurisdiction. Being a specific Revenue power contained in the Taxes Consolidation Act, I cannot identify any

basis which would rebut the presumptions above outlined. Consequently I cannot hold that the section has any extra territorial effect.

44. This finding on the Revenue's case could be said to be obiter as the applicant seeks an order, not as against the Isle of Man branch *per se*, but rather as against the defendant Irish company. Therefore it is not necessary to establish that the section has such effect. If the accounts in question were "kept" at a branch which was situated within this jurisdiction then the defendant bank could not be heard to complain. But such accounts were not so kept. The question then arises as to what difference the Isle of Man location makes to this application? Are the facts that the respondent bank is subject to Irish law, that it has its principal place of business in this jurisdiction and that the information and records requested are most probably reachable from its Dublin office, sufficient to justify this court in granting the order sought? Or do other considerations prevent such an outcome?

45. Quite a similar point, arose in *Re Grossman* (1981) Cr. App. R. 302, but did so under different legislation which raised its own particular difficulties, many of which are of no immediate interest to it. In that case Mr. Grossman was charged in Wales with a fraud on the Revenue. To support its intended prosecution against him, the Revenue wanted to inspect and take copies of entries in relation to an account held in the name of Saving and Investment Bank Limited (S.I.B.) at the Isle of Man branch of Barclays bank. The account holder, which was a bank registered in the Isle of Man, collected and paid cheques by using this branch of Barclays, effectively as a clearing house. In 1979 officers of the Revenue Commissioners sought an order from the courts in the Isle of Man under the Bankers Books Evidence Act of 1935. The Deemster, when giving judgment pointed out that s. 7 of the 1935 Act applied only to "legal proceedings" in that jurisdiction and accordingly there was no question of granting an order in aid of a prosecution in Wales. Mr. Grossman then absconded but on his arrest and detention, the Revenue re-activated its search for supporting evidence. In 1981 it issued a motion in the English Courts, but this time addressed the reilefs sought not to Barclays Bank in the Isle of Man, but rather to Barclays Bank in London. They were successful at first instance. S.I.B. then obtained an injunction from the Deemster in Douglas preventing Barclays Bank from permitting inspection or disclosing details of any books or records relative to its account. It also appealed the High Court decision to the Court of Appeal where Lord Denning gave one of the two judgments in the case. Dealing with a submission that the order sought was purely a personal one against a bank subject to English law, Lord Denning at pp. 307-308 of the report said "I was impressed at first by [this] argument … But on reflection I think that the branch of Barclays Bank in Douglas, Isle of Man, should be considered in the same way as a branch of the Bank of Ireland or an American bank, or any other bank in the Isle of Man which is not subject to our jurisdiction. The branch of Barclays Bank in Douglas, Isle of Man, should be considered as a different entity separate from the head office in London. It is subject to the laws and regulations of the Isle of Man. It is licensed by the Isle of Man government. It has its customers there who are subject to one Manx Law. It seems to me that the court here ought not in its discretion to make an order against the head office here in respect of the books of the branch in the Isle of Man in regard to the customers of that branch. It would not be right to compel the branch … or its customers … to open their books or to reveal their confidences in support of legal proceedings in Wales.

Any order in respect of the production of the books ought to be made by the courts of the Isle of Man – if they will make such an order. It ought not to be made by these courts. Otherwise there would be danger of a conflict of jurisdictions between the High Court here and the courts of the Isle of Man. That is a conflict which we must always avoid. From a practical point of view, it seems to me that, in order to have inspection of the books of a bank in England or Wales, an application should be made under the 1879 Act here: and for that inspection of the books and entries in the Isle of Man the application should be made under the Isle of Man statutes. This case does not come under the Isle of Man statutes. It is no good going there. It seems to me that, although this court has jurisdiction to order the head office here to produce the books, in our discretion it should not be done".

46. In summary on the issue relevant to this case, the Court of Appeal held as follows:

> (a) An Isle of Man branch of an English bank should be treated differently from its parent company. The former should be subject to Isle of Man law and the latter subject to English law. In effect the branch should be regarded as a foreign bank and not as one subject to English jurisdiction.
>
> (b) If inspection is required in the circumstances outlined, then an application should be made to the Isle of Man courts using the statutory procedure available in that jurisdiction. This would include the Bankers Books Evidence Act 1935. The fact that such an application may be unsuccessful as not coming within the Act, did not alter this principal view of bank and branch separation and
>
> (c) Whilst the court had power to grant what the Revenue sought, in that the application was against Barclays Bank in England which came within the provisions of the Bankers Books Evidence Act, 1879, nevertheless, given the views of the Isle of Man Court, it would in its discretion refuse to so do as a conflict of jurisdiction should always be avoided.

This case of *Grossman* has been subsequently approved on several occasions including the *Libyan Arab Bank* cases, and in *Mackinnon v. Donaldson* [1986] Ch. 482.

47. In *Chemical Bank v. McCormack* [1983] ILRM 350, Carroll J., on notice, reviewed an *ex parte* order earlier made by her under the Bankers Books Evidence Acts 1879 – 1959 to the effect that the plaintiff could inspect and take copies, "at" AIB's branch in New York of accounts held by that bank in both Dublin and New York. Amending the earlier order she said "There are no clear words in the 1879 Act or the amending 1959 Act which would support the interpretation of an intention to have extra territorial effect. I do not have power to order inspection in a foreign county and therefore the order which authorises inspection 'at the branch in New York is in excess of jurisdiction". In addition she extensively considered the *Grossman* case and undoubtedly followed the approach adopted by the Court of Appeal. As a result she accepted that under the Bankers Books Evidence Acts the High Court did have power to make an order compelling AIB, as a company incorporated in this jurisdiction, to make available for inspection in this country, an account held by the bank at its branch in New York. However even having arrived at that conclusion, the learned Judge went on to say " … I do not propose to make such an order in case there would be a conflict of jurisdiction, which should be avoided in the interest of the comity of courts". See p. 354 of report.

By so deciding it is quite clear that she proceeded on the basis of two different systems of law interacting on the application before her, and without even having evidence of New York law, she practiced the self restraint which I have mentioned, in the interest of jurisdictional comity. In so doing she was adhering to the principle that a State should refrain from demanding obedience to its sovereign authority by foreigners in respect of their conduct outside the jurisdiction. *Mackinnon v. Donaldson* [1986] 1 All E.R. 653 at 658.

48. In conjunction with my views on what the proper law is, could I say that I respectfully agree these above authorities and accordingly hold that the branch of the respondent's bank located in the Isle of Man should not be assimilated with its parent Irish company for the purposes of domestic jurisdiction. Rather the laws of the Isle of Man, which authorised, supervised and controlled the operation of this branch must be the applicable laws in respect of its banking business and cannot simply be ignored. What view

therefore does the Isle of Man take of this type of application? Apart from what is stated in the Grossman decision, there are two further sources of important information in this regard. The first is the decision in *Re Blayney* and the second of course is the view of the Isle of Man lawyers.

49. On the 30th March, 1998, Mr. Justice Blayney and Mr. Tom Grace, an accountant, were appointed by the High Court under s. 8 of the Companies Act, 1990 to investigate and report on the affairs of National Irish Bank Limited. As part of its investigation the Inspectors sought an order in the Isle of Man under s. 7 of the Bankers Books Evidence Act, 1935. The application came before Deemster Cain who gave judgment on 27th April, 2001. In his decision he came to the conclusion that the Inspector's investigation was not a "legal proceeding" for the purposes of the 1935 Act and that such a phrase meant a "legal proceeding" in the Isle of Man and not a "legal proceeding" in a foreign jurisdiction. Even however if he was incorrect in both of these points he also held that disclosure in the public interest was not such as to outweigh the duty of confidentiality which a banker owed to its customers. He refused the application. Although the investigation in the present case is being conducted by the Revenue and not by Inspectors under the Companies Act, nevertheless it is probable, that in the absence of a material change in the law, the Deemster, on any application by the Revenue Commissioners, would arrive at the same decision which he did in the *Blayney* case.

50. Apart from this decision, the other source of information available with regard to Isle of Man law, is that of Mann and Partners in their letter of 2nd November, 2005, which is largely reproduced at para. 10 above. Foreign law is a matter of fact to be established by the opinion of an expert in that field. No contrary evidence has been produced. In any event the essence of the opinion is entirely consistent with the decision in *Re Blayney*. I am therefore satisfied to accept it as representing what the current law is in the Isle of Man.

That being so it is entirely unnecessary in my view to await either an application for or the granting of an injunction by the Isle of Man Court. I am entirely satisfied on the evidence that without a domestic court order, any attempt by a foreign court to compel disclosure of an Isle of Man bank account, is incompatible with the laws of that jurisdiction.

51. It has been submitted on behalf of Mr. Walsh that this letter of advice is capable of an interpretation which falls far short of confirming that it would be unlawful for the respondent to give the requested information without first attending court sanction from the Isle of Man. With respect I disagree with this interpretation. In my view the true point is that the bank seeks an order for protection against the threat of a civil action by its former account holders and the latter group are entitled to have its account details governed by Manx law. In any event this letter of 2nd November, 2005, clearly establishes that without customer consent, an Isle of Man Bank would obtain no protection against a civil action for breach of confidentiality if it disclosed account details pursuant to an order of a foreign court. Furthermore and as a matter of high probability the Manx Court would on application, issue an injunction either by way of *quia timet* or else to prohibit disclosure after the foreign order. I am therefore, as I have said entirely satisfied as to what the Isle of Man law is on this issue.

52. Even therefore if the Revenue Commissioners are correct in submitting that s. 908 applies to National Irish Bank, with its registered office in Dublin, I would not deliberately offend the integrity of the Isle of Man or its judicial system by granting an order which I knew they would strongly object to. To do so would be downright disrespectful to a sovereign jurisdiction and would be the antithesis of showing due respect for the comity of courts. I would therefore decline to grant the order sought.

53. Finally there was a suggestion running through a number of submissions made by the Revenue Commissioners that if this court should grant the order as sought, the respondent bank would be most reluctant to frustrate its effects by seeking an injunction in the Isle of Man. I am not sure precisely what the applicant means in this regard. However could I categorically say that this Court is not in the business of making orders which rely for their compliance, in part upon public opinion, in part upon the fear of public reaction or in part upon moral obligations. In the absence of a justifiable legal basis no such order should issue.

54. I therefore refuse the relief sought.

55. There is one further matter which I should mention. Every application under s. 908 must be heard "in camera" (sub-section (7)) and under sub-section (9) the Judge is given power to preserve the anonymity of the "authorised officer", who moved the application, where it is in the public interest to so do. In accordance with practice however any resulting judgment should be delivered in public. In order, therefore, to satisfy both of these requirements, it seems to me that before any such publication, the parties should be give an opportunity to make submissions on the possible effects of these sub-sections to any given case. In this way the court will be in a position to make the most appropriate order possible respecting these statutory provisions as well as administrating justice in public.