

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,739 of 15th October, 2009**

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Private Member's Bill 03/09

**THE ROYAL BANK OF SCOTLAND (GIBRALTAR)  
(TRANSFER OF UNDERTAKING) ACT 2009**

**ARRANGEMENT OF CLAUSES**

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*The Royal Bank of Scotland (Gibraltar) (Transfer of Undertaking) Act 2009*  
[Private Member's Bill. 03/09]

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Private Member's Bill 03/09

**BILL**

**FOR**

**AN ACT** to make provision for and in connection with the transfer of the Undertaking of The Royal Bank of Scotland (Gibraltar) Limited to The Royal Bank of Scotland International Limited.

**ENACTED** by the Legislature of Gibraltar.

**Title and interpretation.**

1.(1) This Act may be cited as The Royal Bank of Scotland (Gibraltar) (Transfer of Undertaking) Act 2009.

(2) In this Act—

“the RBS Holding Company” means the company which is incorporated in the Island of Jersey under the name The Royal Bank of Scotland International (Holdings) Limited;

“RBSG” means the company which is incorporated in Gibraltar under the name The Royal Bank of Scotland (Gibraltar) Limited, which is a subsidiary of the RBS Holding Company and which carries on business in Gibraltar under the names “RBS International” and “NatWest”;

“RBSI” means the company which is incorporated under the name The Royal Bank of Scotland International Limited in the Island of Jersey, which is also a subsidiary of the RBS Holding Company and which carries on business in Gibraltar through the medium of a branch and under the name “NatWest”;

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“the change-over date” means such date as may be appointed by the Minister by notice in the Gazette for the purposes of the vesting in RBSI of the undertaking of RBSG;

“customer” includes any person having a bank account or similar contract or arrangement with RBSG;

“document” means a document of any description whatsoever, together with any record, tape, disc or other thing from which information of any description can be obtained by mechanical, electronic or other means;

“existing” means in existence immediately before the change-over date (whether or not in force or otherwise having legal effect at that time);

“the undertaking of RBSG” means the banking and investment business of RBSG which, immediately before the change-over date, is carried on in Gibraltar in and from premises in Corral Road, Gibraltar;

“liabilities” includes debts, duties and obligations of every description wherever arising (whether actual or contingent, present or future);

“the Minister” means the Minister with responsibility for financial services;

“property” means property and assets of every description, whether real or personal, moveable or immoveable and wherever situated (including property held on trust and securities, rights, benefits and powers of every description);

“securities” includes mortgages, security interests, charges, debentures, fixed securities, floating charges, personal bonds, bills of exchange, promissory notes, trust receipts, warehouse warrants, guarantees, indemnities, liens, rights of retention, pledges or other means of securing payment of a debt, whether present or future, or the discharge of any obligation or liability.

**Vesting of undertaking of RBSG in RBSI.**

2.(1) On the change-over date the undertaking of RBSG shall, by virtue of this Act, vest in RBSI to the intent that RBSI shall succeed to that undertaking in all respects as if RBSI were the same person in law as RBSG.

(2) The following provisions of this Act have effect for the purpose of giving full effect to, and supplementing, the provisions of subsection (1).

**Specific provisions as to vesting of property.**

3.(1) Subject to any provision of this Act making specific provision in relation to property of any description, all property which forms part of the undertaking of RBSG shall, by virtue of this Act (and without any assignment or other form of transfer or the need for any consent), become on the change-over date property of RBSI in respect of its undertaking in Gibraltar.

(2) All property which forms part of the undertaking of RBSG and is held by RBSG jointly with any other person shall, by virtue of this Act (and without any assignment or other form of transfer or the need for any consent), become on the change-over date property of RBSI jointly with that other person.

(3) In so far as, immediately before the change-over date, any property to which subsection (1) or subsection (2) applies is subject to the rights or liabilities of any other person, those rights or liabilities shall continue on and after that date in all respects as if RBSI and RBSG were the same person in law.

(4) Without prejudice to the generality of subsections (1) to (3), those subsections apply to property held subject to any trust or other fiduciary obligation as they apply to property not so held and, accordingly, on and after the change-over date, RBSI shall hold that property (alone or, as the case may be, jointly with any other person) subject to the same trust or fiduciary obligation as applied to RBSG before that date.

(5) If, immediately before the change-over date, any document or other thing is in the custody or possession of (but is not the property of) RBSG, then, on that date that document or other thing shall, by virtue of this Act (and without the need for any consent or other dealing), pass into the custody

or possession of RBSI in respect of its undertaking in Gibraltar, in all respects as if RBSI and RBSG were the same person in law.

**Excluded property and transfer of tenancy.**

4.(1) Subject to subsection (2), nothing in this Act applies to—

- (a) any interest in land in Gibraltar which, immediately before the change-over date, is occupied by RBSG in respect of its undertaking;
- (b) any licence or authorisation held by RBSG under the Financial Services (Investment and Fiduciary Services) Act, the Financial Services (Banking) Act, the Financial Services (Collective Investment Schemes) Act 2005 or the Financial Services (Markets in Financial Instruments) Act 2006;
- (c) any rights or liabilities or other property in which, immediately before the change-over date, no person other than RBSG and RBSI had an interest;
- (d) any contract or other property of which the proper law is not the law of Gibraltar; or
- (e) the share capital and reserves of RBSG.

(2) If at any time after the passing of this Act (whether before, on or after the change-over date) a tenancy of land occupied by RBSG (or of land which was so occupied immediately before the change-over date) is assigned by RBSG to RBSI, then, without prejudice to the operation of section 62(2)(c) of the Landlord and Tenant Act 1983 (assignment of tenancy from one member of a group to another not to be treated as a change in the person of the tenant) nothing in section 69 of that Act (consents to assignment) shall apply in relation to that assignment.

**Documents.**

5.(1) Subject to any specific provision made by the following provisions of this Act in relation to a document or reference of a particular description, as respects anything done or falling to be done, or any other thing occurring, on or after the change-over date, any reference in an existing document to

RBSG shall be construed as or, as the case may require, as including a reference to RBSI.

(2) As respects anything done or falling to be done on or after the change-over date, any reference in an existing document to the directors or any description of director, officer or other member of staff of RBSG shall be construed as a reference to the directors of RBSI or, as the case may be, to such description of director, officer or staff member of RBSI as RBSI may nominate in writing for the purpose or, in default of such a nomination, to that description of director, officer or employee of RBSI which, in respect of its undertaking in Gibraltar, corresponds as nearly as may be to the description specified in the document.

(3) On and after the change-over date, all documents which, before that date, would have been evidence in respect of any matter for or against RBSG in respect of its undertaking shall be admissible in respect of the same matter for or against RBSI.

(4) Nothing in this section applies to a document which is or forms part of an enactment.

**Accounts.**

6. Any existing account between RBSG and a customer shall, on the change-over date, become an account between RBSI in respect of its undertaking in Gibraltar and that customer and shall continue on and after the change-over date in all respects subject to the same terms and conditions as applied immediately before that date (including any terms or conditions providing for variation or termination).

**Supplementary provisions as to other matters.**

7.(1) The provisions of this section have effect without prejudice to the generality of the preceding provisions of this Act.

(2) Whether or not it is contained in a document, any existing instruction, order, direction, mandate, power of attorney, consent, undertaking or other thing to which RBSG is a party or which otherwise affects RBSG in respect of its undertaking shall have effect on and after the change-over date as if RBSI were a party to it or, as the case may be, shall similarly affect RBSI on and after that date.

(3) If, under any existing document, RBSG is or would be entitled in respect of any matter relevant to its undertaking—

- (a) to charge remuneration in accordance with a scale for the time being applicable to RBSG, or
- (b) otherwise to act in accordance with any terms and conditions for the time being so applicable,

then, on and after the change-over date, the document shall be construed as entitling RBSI to charge in accordance with the corresponding scale or, as the case may be, to act in accordance with the corresponding terms and conditions for the time being applicable to RBSI in respect of its undertaking in Gibraltar.

(4) On and after the change-over date, any claims or legal proceedings which are existing or pending before that date by or against RBSG shall be treated for all purposes as if RBSG and RBSI were the same person in law except that, by virtue of this Act, the name of RBSI shall be substituted in those proceedings for that of RBSG.

#### **Application of Bankers' Books Evidence Act 1879.**

8.(1) On and after the change-over date, the Bankers' Books Evidence Act 1879 (in this section referred to as "the 1879 Act") shall apply to the bankers' books of RBSG which, by virtue of this Act, become the property of RBSI as if those books were the bankers' books of RBSI.

(2) For the purposes of the application on and after the change-over date of section 4 of the 1879 Act to a copy of an entry purporting to be made before that date in a book to which subsection (1) applies,—

- (a) at the time of the making of the entry the book shall be deemed to have been an ordinary book of RBSI; and
- (b) the entry shall be deemed to have been made in the usual and ordinary course of business.

(3) Expressions used in this section and in the 1879 Act have in this section the same meaning as in that Act.



**Evidence as to transfer of property.**

9. Any document coming into existence after the change-over date whereby RBSI, whether alone or jointly with any other person,—

- (a) conveys or transfers or purports to convey or transfer, or
- (b) applies to be registered as the holder or proprietor of,

any property which, immediately before the change-over date, was held by RBSG, whether alone or jointly with any other person, shall be prima facie evidence that the interest of RBSG in that property became vested in RBSI by virtue of this Act.

**Expenditure attributable to enactment of Act.**

10. The expenditure incurred by the Government in connection with the introduction and enactment of this Act, as certified by the Minister, shall be paid by RBSI.

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### **EXPLANATORY MEMORANDUM**

This Bill makes provision for and in connection with the transfer of the Undertaking of The Royal Bank of Scotland (Gibraltar) Limited (“RBSG”) to The Royal Bank of Scotland International Limited (“RBSI”) which already carries on business through a branch in Gibraltar.

Section 1 contains the short title and the definitions used in the Bill. In particular, subsection (2) defines “the change-over date” as a date to be appointed by the Minister with responsibility for financial services. This date is relevant to section 2 and later sections.

Section 2 is the basic provision vesting the undertaking of RBSG in RBSI. The vesting will take place on the change-over date. The remainder of the provisions of the Bill develop, supplement and refine this basic proposition.

Section 3 makes specific provisions in relation to property (defined very widely in section 1(2)) which becomes property of, or passes into the custody or possession of, RBSI as a result of the Bill. The section preserves the rights of third parties in such property.

Section 4, subsection (1) excludes 5 descriptions of property from the Bill. These are the operational land of RBSG, RBSG’s licences and authorisations to carry on banking and various descriptions of financial services rights and liabilities in property in which only RBSG and RBSI have an interest, contracts and other property which are not governed by the law of Gibraltar and the share capital and reserves of RBSG. Subsection (2) is a technical provision to ensure that the existing statutory provisions about transfers of property within a group apply in the present case.

Section 5 contains detailed provision about documents which at present refer to or otherwise affect RBSG.

Section 6 deals specifically with accounts which move from RBSG to RBSI. The terms and conditions of the accounts are to continue on and after the change-over date as they applied before, but subject to any existing provisions for variation.

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Section 7 contains various detailed provisions relating to existing instructions and mandates, etc, charges and claims and proceedings. The essence of these provisions is to ensure continuity.

Section 8 is a technical provision about the Bankers' Books Evidence Act 1879. Its purpose is to ensure that, when the pre-change-over date banking records of RBSG move to RBSI, they are treated for the purposes of the 1879 Act as continuing records of RBSI.

Section 9 is an evidential provision concerned with documents which come into existence after the change-over date and relate to transfers or registration by RBSI of interests in property which were previously held by RBSG. The documents are to be prima facie evidence that the interests have become vested in RBSI.

Section 10 requires RBSI to meet expenditure certified as that incurred by the Government of Gibraltar in connection with the introduction and enactment of the Bill.

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