

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,827 of 23rd December, 2010**

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Private Member's Bill 01/10

**BARCLAYS PRIVATE CLIENTS INTERNATIONAL (GIBRALTAR)  
LIMITED (TRANSFER OF UNDERTAKING) ACT 2011**

**ARRANGMENT OF CLAUSES**

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*Barclays Private Clients International (Gibraltar) Limited (Transfer of  
Undertaking) Act 2011* [Private Member's Bill 01/10]

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Private Member's Bill 01/10

**BILL**

**FOR**

**AN ACT** to make provision for and in connection with the transfer of the undertaking of Barclays Private Clients International (Gibraltar) Limited to Barclays Bank PLC

**ENACTED** by the Legislature of Gibraltar.

**Title and interpretation.**

1.(1) This Act may be cited as the Barclays Private Clients International (Gibraltar) Limited (Transfer of Undertaking) Act 2011.

(2) In this Act—

“the Barclays Holding Company” means the company which is incorporated in the United Kingdom under the name Barclays PLC;

“Barclays Bank PLC” means the company which is incorporated under that name in the United Kingdom, which is also a subsidiary of the Barclays Holding Company and which carries on business in Gibraltar through the medium of a branch;

“BPCI Gibraltar” means the company which is incorporated in Gibraltar under the name Barclays Private Clients International (Gibraltar) Limited and which is a subsidiary of the Barclays Holding Company;

“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 Barclays Bank PLC of the undertaking of BPCI Gibraltar;

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

“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);

“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;

“undertaking”, in relation to BPCI Gibraltar, does not include its share capital and reserves.

**Vesting of undertaking of BPCI Gibraltar in Barclays Bank PLC.**

2.(1) On the change-over date the undertaking of BPCI Gibraltar shall, by virtue of this Act, vest in Barclays Bank PLC in respect of its Gibraltar

branch to the intent that Barclays Bank PLC shall succeed to that undertaking in all respects as if Barclays Bank PLC were the same person in law as BPCI Gibraltar.

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

**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 BPCI Gibraltar 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 Barclays Bank PLC.

(2) All property which forms part of the undertaking of BPCI Gibraltar and is held by BPCI Gibraltar jointly with any other person, other than Barclays Bank PLC, 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 Barclays Bank PLC 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 Barclays Bank PLC were the same person in law as BPCI Gibraltar.

(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, Barclays Bank PLC 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 BPCI Gibraltar immediately 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) BPCI Gibraltar, 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 Barclays Bank PLC to be held in all respects as if Barclays Bank PLC and BPCI Gibraltar were the same person in law.

**Excluded property.**

4. The vesting by virtue of this Act of the undertaking of BPCI Gibraltar in Barclays Bank PLC does not apply to—

- (a) any interest in land in Gibraltar which, immediately before the change-over date, is occupied by BPCI Gibraltar;
- (b) any licence or authorisation held by BPCI Gibraltar under the Financial Services (Investment and Fiduciary Services) Act, the Financial Services (Banking) Act or the Financial Services (Markets in Financial Instruments) Act 2006; or
- (c) any rights or liabilities or other property in which, immediately before the change-over date, no person other than BPCI Gibraltar and Barclays Bank PLC had an interest.

**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 BPCI Gibraltar shall be construed as or, as the case may require, as including a reference to Barclays Bank PLC.

(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 employee of BPCI Gibraltar shall be construed as a reference to the directors of Barclays Bank PLC or, as the case may be, to such description of director, officer or employee of Barclays Bank PLC as Barclays Bank PLC may nominate in writing for the purpose or, in default of such a nomination, to that description of director, officer or employee of Barclays Bank PLC which 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 BPCI

Gibraltar shall be admissible in respect of the same matter for or against Barclays Bank PLC.

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

**Accounts.**

6. Any existing account between BPCI Gibraltar and a customer shall, on the change-over date, become an account between Barclays Bank PLC 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 BPCI Gibraltar is a party or which otherwise affects BPCI Gibraltar shall have effect on and after the change-over date as if Barclays Bank PLC were a party to it or, as the case may be, shall similarly affect Barclays Bank PLC on and after that date.

(3) If, under any existing document, BPCI Gibraltar is or would be entitled—

- (a) to charge remuneration in accordance with a scale for the time being applicable to BPCI Gibraltar, 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 Barclays Bank PLC 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 Barclays Bank PLC.

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

**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 BPCI Gibraltar which, by virtue of this Act, become the property of Barclays Bank PLC as if those books were the bankers' books of Barclays Bank PLC.

(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 Barclays Bank PLC; 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 Barclays Bank PLC, 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 BPCI Gibraltar, whether alone or jointly with any other person, shall be



prima facie evidence that the interest of BPCI Gibraltar in that property became vested in Barclays Bank PLC by virtue of this Act.

**Winding up of BPCI Gibraltar.**

10. (1) On such date (in this section referred to as “the winding-up date”) as may be specified by the Minister, by notice in the Gazette, BPCI Gibraltar shall be wound up by virtue of this Act (and without any application or other proceeding or action) and the share capital and any other property remaining with BPCI Gibraltar immediately before the winding-up date shall be distributed accordingly to those who at that time were the shareholders.

(2) The date specified as the winding-up date shall not be earlier than the date on which BPCI Gibraltar ceases to hold any licence or authorisation under any of the enactments referred to in section 4(b).

(3) For the purpose of enabling the Registrar of Companies to take such action as he considers appropriate in consequence of the winding-up of BPCI Gibraltar, not later than seven days after the winding-up date, Barclays Bank PLC shall send to the registrar a copy of the notice in the Gazette specifying that date.

**Expenditure attributable to enactment of this Act**

11. 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 Barclays Bank PLC.

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**EXPLANATORY MEMORANDUM**

This Bill makes provision for and in connection with the transfer of the undertaking of Barclays Private Clients International (Gibraltar) Limited (“BPCI Gibraltar”) to Barclays Bank PLC which already carries on business in Gibraltar through a branch.

Section 1 contains the short title and the definitions used in the Bill. In particular, “the change-over date” is defined as a date to be appointed by the

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Minister with responsibility for financial services. This date is relevant to section 2 and later sections.

Section 2 is the basic proposition vesting the undertaking of BPCI Gibraltar in Barclays Bank PLC. This vesting will take place on the change-over date. Most of the remaining provisions of the Bill develop, supplement and refine this basic proposition.

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

Section 4 excludes three descriptions of property from the scope of the Bill. These are—

- (a) any interest in land in Gibraltar which, immediately before the change-over date, is occupied by BPCI Gibraltar;
- (b) statutory licences and authorisations held by BPCI Gibraltar in order to allow it to transact certain types of financial services business; and
- (c) rights or liabilities or other property in which, immediately before the change-over date, no person other than the two Banks have an interest.

Section 5 contains detailed provisions about documents which currently refer to or otherwise affect BPCI Gibraltar.

Section 6 deals with accounts which move from BPCI Gibraltar to Barclays Bank PLC. The terms and conditions of the accounts are to continue to apply on and after the change-over date as they applied before, but subject to any existing provision for variation.

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

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records of BPCI Gibraltar move to Barclays Bank PLC, they are treated for the purposes of the 1879 Act as continuing records of Barclays Bank PLC.

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 Barclays Bank PLC of interests in property which were previously held by BPCI Gibraltar. The documents are to be prima facie evidence that the interests have become vested in Barclays Bank PLC.

Section 10 provides for the winding up of BPCI Gibraltar which, after the transfer of its undertaking to Barclays Bank PLC, will be simply a shell. The winding up will take place on a date to be specified by the Minister and this date must be after BPCI Gibraltar has divested itself of its various licences and authorisations to carry on financial services business. There is also provision for notifying the Registrar of Companies that BPCI Gibraltar has been wound up by virtue of the Bill.

Section 11 requires Barclays Bank PLC 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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