

## **HALIFAX INTERNATIONAL ACT 2001**

### **Chapter 11**

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Signed in Tynwald: 15th May 2001  
Received Royal Assent: 15th May 2001  
Announced to Tynwald: 15th May 2001  
Passed: 15th May 2001

## AN ACT

to carry into effect the transfer to and vesting in  
Halifax International Limited of the undertaking  
of Halifax International (Isle of Man) Limited;  
and for connected purposes.

### WHEREAS:

(1) Halifax International (Isle of Man) Limited (hereinafter referred to as "the Transferor Company") is a limited company incorporated under the Companies Acts 1931 to 1992 which carries on banking business in the Island, being licensed to do so under the Banking Act 1998.

(2) Halifax International Limited (hereinafter referred to as "the Company") is a limited company incorporated in the Island of Jersey under the Loi (1861) sur les Sociétés à Responsabilité Limitée which carries on, inter alia, banking business in the Island, being licensed to do so under the Banking Act 1998.

(3) For the better conduct of the businesses of the Transferor Company and the Company it is expedient to make provision for the transfer to the Company of the undertaking of the Transferor Company.

(4) It is expedient that the other provisions contained in this Act should be enacted.

(5) The object of this Act cannot satisfactorily be attained without the authority of an Act of Tynwald.

**W**E, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

**1. Short title**

This Act may be cited as the Halifax International Act 2001.

**2. Interpretation**

(1) In this Act —

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

"appointed day" means the day appointed under section 3 as the appointed day for the purposes of this Act;

"Company" means Halifax International Limited;

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

"convey" has the same meaning as in the Conveyancing Act 1908<sup>1</sup>;

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

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

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

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

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

"Transferor Company" means Halifax International (Isle of Man) Limited;

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

"undertaking" means the business and property and liabilities of the Transferor Company of whatever nature; and

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<sup>1</sup> VIII p.241

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

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

### **3. Appointed day**

This Act shall come into operation on such day as may be appointed by order made by the Council of Ministers on the application of the Company.

### **4. Vesting of undertaking in the Company**

(1) On the appointed day the undertaking shall, by virtue of this Act and without further assurance, be transferred to, and vest in, the Company to the intent that the Company shall succeed to the undertaking as if in all respects the Company were the same person in law as the Transferor Company.

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

### **5. Provisions as to trust property and wills**

(1) Any property transferred to, and vested in, the Company by virtue of this Act which immediately before the appointed day was held by the Transferor Company, whether alone or jointly with any other person, as trustee, shall, on and from the appointed day, be held by the Company alone or, as the case may be, jointly with such other person in the same capacity upon the trusts, and with and subject to the powers, provisions and liabilities, applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property became or may become vested in the Transferor Company as trustee, and any provision therein, or any existing contract for the payment to, or retention by the Transferor Company of remuneration for its services in any such capacity, shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to the Transferor Company, other than a reference (however worded and whether express or implied) to terms and conditions of, or to a charge, tariff or scale of fees of, the Transferor Company, there were substituted a reference to the Company: Provided that any right which was exercisable by the Transferor Company to alter the terms and conditions or the charge, tariff

or scale of fees of the Transferor Company shall on or after the appointed day be exercisable by the Company.

(3) Any will made before the appointed day which has not been proved in the Island before the appointed day, and any will made on or after the appointed day, being a will which appoints the Transferor Company to be a trustee or recipient of any property as trustee, shall be construed and have effect as if for any reference therein to the Transferor Company as such trustee or recipient or otherwise in connection with such appointment, not being a reference (however worded and whether express or implied) to terms and conditions of, or to a charge, tariff or scale of fees of, the Transferor Company, there were substituted a reference to the Company: Provided that any right which was exercisable by the Transferor Company to alter the terms and conditions or the charge, tariff or scale of fees of the Transferor Company shall on or after the appointed day be exercisable by the Company.

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

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

(1) Without prejudice to the generality of the foregoing provisions of this Act but subject to any provision of this Act to the contrary, the following provisions of this section shall have effect in relation to the undertaking.

(2) Every contract to which the Transferor Company is a party shall be construed and have effect on and from the appointed day –

- (a) as if the Company had been a party thereto instead of the Transferor Company
- (b) subject to subsection (4), as if for any reference (however worded and whether express or implied) to the Transferor Company there were substituted a reference to the Company;
- (c) as if any reference (however worded and whether express or implied) to the directors, officers, representatives or employees or to any director, officer, representative or employee of the Transferor Company were a reference to the directors, officers, representatives or employees of the Company as the case may require, or to such director, officer, representative or employee of the Company as the Company may nominate for that purpose or, in default of nomination, to the director, officer, representative or employee of the Company who corresponds as nearly as may be to the first mentioned director, officer, representative or employee; and
- (d) where the contract relates to property or liabilities which are for the time being only partly transferred to, and vested in, the Company by virtue of this Act, as if the contract, to the extent to which it is enforceable by and against the Transferor Company, constituted two separate contracts, one of which is

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enforceable by and against the Company as regards the part of the property, or as the case may be, liabilities so transferred to, and vested in, the Company and not as regards the other part, and the other of which is enforceable by and against the Transferor Company as regards the part of the property or, as the case may be, liabilities not so transferred to, and vested in, the Company and not as regards the other part.

(3) Paragraphs (b) and (c) of subsection (2) shall, on and from the appointed day, apply to any provision of any contract to which the Transferor Company was not a party; and sub-paragraphs (a), (b) and (c) of that subsection shall, on and from the appointed day, apply to any provision of any other document (not being a contract or a will) as they apply to a contract to which subsection (2) applies.

(4) Paragraph (b) of subsection (2) shall not apply to the name or title of any rate, charge, tariff, scale of fees, terms or conditions of the Transferor Company which includes the initials, the name or part of the name of the Transferor Company, but on or after the appointed day the Company may change the name or title.

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

(6) Any account between the Transferor Company and a customer shall, on and from the appointed day, become an account between the Company and the customer subject to the same conditions and incidents as theretofore; and such account shall be deemed for all purposes to be a single continuing account: Provided that nothing herein shall affect any right of the Company or of the customer to vary the conditions or incidents subject to which any account is kept.

(7) For the purpose of construing and giving effect to any contract which —

- (a) has effect or continues to have effect on, or on and after, the appointed day; and
- (b) makes reference to a rate, charge, tariff or scale of fees or to terms or conditions published, determined or ascertained from time to time by the Transferor Company,

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

(8) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to or by the Transferor

Company (whether in writing or not) shall have effect, on and from the appointed day, as if given to or, as the case may be, by the Company.

(9) Any negotiable instrument, cheque, warrant, draft, letter of credit or order for payment of money drawn on or by, or given to, or accepted or endorsed by, the Transferor Company, or payable at any place of business of the Transferor Company, whether so drawn, given, accepted, endorsed or payable before, on or after the appointed day, shall have the same effect, on and from the appointed day, as if it had been drawn on or by, or given to, or accepted or endorsed by, the Company or were payable at the same place of business of the Company.

(10) Any document, claim or demand addressed on or after the appointed day to the Transferor Company pursuant to an existing contract shall be deemed to have been addressed to the Company.

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

(12) Any security interest held immediately before the appointed day by or on behalf of the Transferor Company as security for the payment or discharge of any liability shall, on and from the appointed day, be held by or on behalf of the Company and be available to the Company (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of that liability.

(13) In relation to any security interest transferred to, and vested in, the Company by or under this Act and any liabilities thereby secured, the Company shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which the Transferor Company would have been entitled or subject if it had continued to hold the security interest.

(14) Without prejudice to the generality of subsection (13) in any case where any existing liability subsists between the Transferor Company and the Company in respect of which the Transferor Company or the Company, or a nominee or agent of or trustee for the Transferor Company or the Company, holds a security interest, all such liability shall, for the purpose of enforcing or realising that security interest, be deemed to continue in effect notwithstanding the transfer to, and vesting in, the Company of the undertaking.

(15) Any security interest referred to in the foregoing provisions of this section which extends to future advances or liabilities shall, on and from the appointed day, be available to the Company (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of future advances and future liabilities to the same extent and in the same manner in all respects as it extends immediately before that day to future advances or liabilities.

(16) Where by virtue of this Act any property or liability of the Transferor Company becomes property or a liability of the Company, the Company and all other persons shall, on and from the appointed day, have the same rights, powers and remedies (and in particular the same rights and

powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that property or liability as if it had at all times been property or a liability of the Company.

(17) Any right of action and any remedy available in consequence thereof which accrues, arises or becomes enforceable or available before the appointed day by or against the Transferor Company, or which would, but for this Act, accrue, arise or become enforceable or available by or against the Transferor Company on or after the appointed day, may be enforced or availed of by or against the Company on or after the appointed day and any legal proceedings, applications to any authority or other proceedings for the resolution of a dispute pending or current immediately before the appointed day by or against the Transferor Company may be continued by or against the Company.

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

(19) The Data Protection Registrar may, on and from the appointed day, serve on the Company any notice under section 10 of the Data Protection Act 1986<sup>2</sup> which could have been served on the Transferor Company in respect of a breach by the Transferor Company of the data protection principles; but the transfer to, and vesting in, the Company by this Act of the undertaking (and any disclosure to the Company of any information in contemplation or as a result thereof) shall not amount to a breach of any duty of confidentiality to which the Transferor Company is subject at the date of such disclosure or to a contravention by the Company or the Transferor Company of the data protection principles.

## **7. Contracts of employment, etc.**

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

(2) No director, secretary or auditor of the Transferor Company shall by virtue only of this Act become a director, secretary or, as the case may be, auditor of the Company.

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<sup>2</sup> 1986 c.31

**8. Retirement benefits schemes.**

(1) No provision of this Act shall operate so as to prejudice or otherwise affect the rights or benefits of any former or current officer or employee of the Transferor Company under any existing retirement benefits scheme.

(2) In this section "retirement benefits scheme" has the same meaning as in section 53 of the Retirement Benefits Schemes Act 2000<sup>3</sup>.

**9. Evidence of transfer and vesting**

(1) A copy of this Act printed by authority shall, for all purposes, be conclusive evidence of the transfer to, and vesting in, the Company of the undertaking in accordance with the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) any such copy of this Act shall, in relation to any registered securities within the meaning of the Stock Transfer Act 1965<sup>4</sup> transferred to, and vested in, the Company by virtue of this Act, operate for all the purposes of the said Act of 1965 as a duly executed stock transfer in respect of the transfer of such securities from the Transferor Company to the Company.

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

(a) any document made or executed on or after the appointed day whereby the Company, whether alone or jointly with any other person, conveys, or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by the Transferor Company immediately before the appointed day, whether alone or jointly with any other person, shall be sufficient evidence that the interest of the Transferor Company in that property has been transferred to and vested in the Company, alone or jointly, under this Act; and

(b) where there is any other transaction by the Company on or after the appointed day in connection with, or in relation to, any property or liability which is property or a liability of the Transferor Company immediately before the appointed day, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that the Company has full power and authority for that transaction as if the property or liability had been transferred to and vested in it under this Act.

(4) A certificate given by or on behalf of the Company whether given before, on or after the appointed day, that any property or liability of the Transferor Company specified in the certificate will transfer and vest, or has

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<sup>3</sup> 2000 c.14

<sup>4</sup> XIX p.1505

transferred and vested, as the case may be, to and in the Company under this Act shall be conclusive evidence for all purposes of the fact so certified.

(5) Nothing in this section affects the liability of the Transferor Company or the Company to the other of them in respect of anything done, or purported to have been done, by either of them in connection with, or in relation to, any property or liabilities.

#### **10. Cancellation of registration of transferor company**

At any time after the appointed day the Financial Supervision Commission shall upon the request of the Company forthwith cancel the registration of the Transferor Company under the Isle of Man Companies Act 1931<sup>5</sup>.

#### **11. Evidence: documents.**

All documents which would before the appointed day have been evidence in respect of any matter for or against the Transferor Company shall be admissible in evidence in respect of the same matter for or against the Company.

#### **12. Application of Bankers' Books Evidence Act 1935.**

(1) The Bankers' Books Evidence Act 1935<sup>6</sup> shall apply to the books of the Transferor Company transferred to, and vested in, the Company by virtue of this Act, and to entries made in those books before the appointed day, as if such books were books of the Company.

(2) For the purposes of section 4 of the said Act of 1935, books so transferred to, and vested in, the Company shall be deemed to have been the ordinary books of the Company at the time of the making of any entry therein which purports to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

(3) In this section "books" has the same meaning as the words "Bankers Books" in the Bankers' Books Evidence Act 1935.

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

(1) The transfer and vesting of any property or of a liability by virtue of this Act shall not —

- (a) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of or dealing with property or of an interest in property for the purposes of any

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<sup>5</sup> XIII p.235

<sup>6</sup> XIV p.300

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enactment other than this Act or any provision in any instrument, contract or order of any court concerning that property or that interest; or

- (b) give rise to any forfeiture; or
- (c) invalidate or discharge any contract, security interest or other thing; or
- (d) require further registration in respect of any security interest; or
- (e) cause or enable the benefit of any contract, permission, licence or privilege enjoyed by the Transferor Company or the Company to be lost or surrendered or otherwise affected, or require the disposal by the Transferor Company or the Company of any interest, otherwise than as provided for in this Act; or
- (f) relieve any person under an obligation to the Transferor Company of a corresponding obligation to the Company; or
- (g) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any contract or instrument to which the Company or the Transferor Company is a party or is bound; or
- (h) allow any party to a contract to terminate that contract when he would not otherwise have been able to terminate it; or
- (i) operate so as to merge any leasehold interest in the reversion expectant on it; or
- (j) entitle any party to any contract to which the Company or the Transferor Company is a party to vary the terms of that contract when he would not otherwise have been able to vary those terms or confer a right or benefit on him which he would not otherwise have had; or
- (k) cause the imposition of any greater or lesser obligations on any party to any contract to which the Transferor Company or the Company is a party when that greater or lesser obligation would not otherwise have been imposed.

(2) Paragraphs (b) to (k) of subsection (1) shall apply to any subsidiaries of the Transferor Company and subsidiaries of the Company as they apply to the Transferor Company and the Company respectively.

**14. Savings for enactments regulating banking etc. business**

Nothing in the foregoing provisions of this Act shall exempt the Transferor Company or the Company or any subsidiaries of either of them from any statutory provision regulating the carrying on of the business of any of them.

**15. Costs of Act.**

All costs, charges and expenses preliminary to, and of and incidental to, the preparing for, obtaining and passing of this Act, or otherwise in relation thereto, shall be paid by the Company.