

**IN THE COURT OF SESSION**

**UNDERTAKINGS OF BNP PARIBAS S.A. AND BNP PARIBAS ARBITRAGE ISSUANCE B.V.**

In the Petition of

**THE ROYAL BANK OF SCOTLAND PLC**, a company registered in Scotland under the Companies Acts with registered number SC090312 and with its registered office at 36 St Andrew Square, Edinburgh, EH2 2YB, United Kingdom

and

**BNP PARIBAS S.A.**, a French *société anonyme* established under the laws of France and registered with the Paris Registry of Commerce and Companies under number 662 042 449, and with its registered office at 16, boulevard des Italiens, 75009 Paris, France

for

Sanction of a banking business transfer scheme under Part VII of the Financial Services and Markets Act 2000 and under which certain deposit-taking and associated business carried on by The Royal Bank of Scotland plc is to be transferred to BNP Paribas S.A.

SELLAR, Q.C., for the Petitioner, BNP Paribas S.A. ("**BNPP SA**") and its wholly owned subsidiary, BNP Paribas Arbitrage Issuance B.V. ("**BNPP IBV**"), in respect of the Deed of Irrevocable Offer (No. \_\_\_ of Process) (the "**DoIO**") and the obligations which the DoIO imposes on BNPP SA and BNPP IBV (the "**DoIO Obligations**"), undertook to the Court on behalf of BNPP SA and BNPP IBV in the following terms:

- 1 If, and to the extent that, any of the DoIO Obligations were, or might be, unenforceable against BNPP SA and/or BNPP IBV, under the law which the DoIO states is to govern the DoIO Obligation (the "**Governing Law**"), BNPP SA and/or BNPP IBV (as applicable) shall nevertheless perform the DoIO Obligation, as if the latter were governed by Scots law;
- 2 Subject to paragraph 5, if any claim to enforce any of the DoIO Obligations is made against BNPP SA and/or BNPP IBV (the "**Relevant BNPP Entity**") and if, and to the extent that, any defence to that claim were, or might be, available to the Relevant BNPP Entity under the Governing Law, the Relevant BNPP Entity shall not rely on that defence if, and to the extent that, a defence with the same, or substantially the same, effect would not be available to the Relevant BNPP Entity under Scots law, if that were the Governing Law;
- 3 Without prejudice to paragraph 2 above, if any claim to enforce any of the DoIO Obligations is made against the Relevant BNPP Entity in the courts to which the DoIO allocates jurisdiction over that claim, the Relevant BNPP Entity shall not advance any defence that that court does not have jurisdiction over that claim; and
- 4 Subject to paragraph 6, if, and to the extent that, in respect of a claim to enforce any DoIO Obligation, the court in which that claim has been made cannot, or declines to, provide a type of remedy which would have been provided by this Court, if that DoIO Obligation were governed by Scots law and a claim to enforce it had been brought in the Court, the Relevant BNPP Entity shall act as if that remedy had been provided by the Court.

- 5 Paragraph 2 shall not apply to the extent that non-reliance on the defence confers a greater advantage on the person making the claim than would have been available to it under Scots law, were that the Governing Law.
- 6 Paragraph 4 shall apply only to the extent that the additional remedy under Scots law confers a greater advantage on the person making the claim than the remedy under the relevant governing law of the DoIO, taking account of that remedy.