

IN THE COURT OF SESSION
UNDERTAKING OF BNP PARIBAS S.A.

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**"), in respect of the Deed of Guarantee (No. ___ of Process) (the "**Guarantee**") and the obligations which the Guarantee imposes on BNPP SA (the "**Obligations**"), undertook to the Court on BNPP SA's behalf in the following terms:

- 1 If, and to the extent that, any of the Obligations were, or might be, unenforceable against BNPP SA, under the law which the Guarantee states is to govern the Obligation (the "**Governing Law**"), BNPP SA shall nevertheless perform the Obligation as if the latter (and, to that extent, the Guarantee) were governed by Scots law;
- 2 Subject to paragraph 5, if any claim to enforce any of the Obligations is made against BNPP SA and if, and to the extent that, any defence to that claim were, or might be, available to BNPP SA under the Governing Law, BNPP SA 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 BNPP SA under Scots law, if that were the Governing Law;
- 3 Without prejudice to paragraph 2 above, if any claim to enforce any of the Obligations is made against BNPP SA in the courts to which the Guarantee allocates jurisdiction over that claim, BNPP SA 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 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 the Court, if that Obligation were governed by Scots law and a claim to enforce it had been brought in the Court, BNPP SA 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 Guarantee, taking account of that remedy.