

**DRAFT ANSBACHER (JERSEY) LIMITED (JERSEY) LAW 199**

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**Lodged au Greffe on 17th November 1998  
by Deputy D.R. Maltwood of St. Mary**

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**STATES OF JERSEY**

**STATES GREFFE**

175

1998

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## Report

Ansbacher (Jersey) Limited (the “Bank”), a private company incorporated in Jersey on 15th March 1995, is a wholly owned subsidiary of Henry Ansbacher Holdings Limited (“Holdings”), a private company incorporated under the laws of Guernsey, which is in turn a wholly owned subsidiary of First National Bank Holdings Limited, a public company incorporated in the Republic of South Africa on 4th September 1989.

Westpac Banking Corporation (Jersey) Limited (“Westpac (Jersey)”) a private company incorporated in Jersey, is a wholly owned subsidiary of Westpac Overseas Holdings Pty Limited, a company incorporated in Australia, and the wholly owned subsidiary of Westpac Banking Corporation. Westpac Banking Corporation is the corporate entity resulting from the merger of the Commercial Bank of Australia Limited with the Bank of New South Wales pursuant to, *inter alia*, the Commercial Bank of Australia Limited (Merger) Act 1982.

By an agreement dated 3rd April 1995 (the “Transfer Date”) between, *inter alios*, Holdings, the Bank and Westpac (Jersey), Holdings purchased, *inter alia*, the banking business of Westpac (Jersey) and agreed to assume and discharge the ancillary liabilities and obligations relating thereto. By an agreement dated 28th August 1998 between Holdings and the Bank it was agreed that Holdings would transfer and the Bank would assume all the liabilities of Holdings in respect of all the customer accounts of Westpac (Jersey). The express consent of all the customers holding an account with Westpac (Jersey) as at the Transfer Date for the transfer of their accounts to the Bank was sought. There still remain some 200 customers with accounts with Westpac (Jersey).

The draft Law will seek to achieve the transfer of all the accounts held with Westpac (Jersey) to the Bank.

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**A LAW** to provide for the transfer to Ansbacher (Jersey) Limited of customer accounts of Westpac Banking Corporation (Jersey) Limited on the acquisition of certain of the assets and the businesses of Westpac Banking Corporation (Jersey) Limited by Ansbacher (Jersey) Limited companies; and for other incidental purposes; sanctioned by Order of Her Majesty in Council of the

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*(Registered on the      day of      199 )*

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**STATES OF JERSEY**

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The      day of      199

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**WHEREAS:**

- (1) First National Bank Holdings Limited (hereinafter called "FNB Holdings") is a public company incorporated in the Republic of South Africa on 4th September, 1989 in terms of the Companies Act of 1973 of the Republic of South Africa as a company limited by shares;
- (2) Henry Ansbacher Holdings Limited (hereinafter called "Holdings") is a private company incorporated under the laws of Guernsey, Registered Number 26027 as a company limited by shares and is a wholly owned subsidiary of FNB Holdings;
- (3) Ansbacher (Jersey) Limited (hereinafter called the "Bank") is a private company incorporated on 15th

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March, 1995 under the Companies (Jersey) Law 1991<sup>1</sup> as a company limited by shares and was registered by the Finance and Economics Committee under the Banking Business (Jersey) Law 1991<sup>2</sup> on 6th March, 1995 and is a wholly owned subsidiary of Holdings;

- (4) Westpac Overseas Holdings Pty. Limited (hereinafter called "WOHPL") is a company registered in New South Wales, Australia incorporated on 6 June, 1986 with Australia company number 00311-6452 and is the wholly owned subsidiary of Westpac Banking Corporation, Registered Body Number 007457141;
- (5) WOHPL is the holding company for the overseas subsidiaries of Westpac Banking Corporation and Westpac Banking Corporation (Jersey) Limited (hereinafter called "Westpac (Jersey)") is a wholly owned subsidiary of WOHPL incorporated in Jersey;
- (6) Westpac Banking Corporation is the corporate entity resulting from the merger of the Commercial Bank of Australia Limited with the Bank of New South Wales pursuant to, *inter alia*, the Commercial Bank of Australia Limited (Merger) Act 1982 of Australia;
- (7) By an agreement dated 3rd April, 1995 between, *inter alios*, Holdings, the Bank and Westpac (Jersey), Holdings purchased, *inter alia*, certain assets and businesses of Westpac (Jersey) and agreed to assume and discharge the ancillary liabilities and obligations relating thereto;
- (8) By an agreement dated 28th August, 1998 between Holdings and the Bank it was agreed that Holdings would transfer and the Bank would assume all the liabilities of Holdings in respect of all the customer accounts of Westpac (Jersey);

<sup>1</sup> Volume 1990-1991, page 875.

<sup>2</sup> Volume 1990-1991, page 477.

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- (9) It is expedient that the transfer of all the customer accounts of Westpac (Jersey) to the Bank should be effected economically and without interference with the conduct and continuity of the said respective businesses and in the interests of the efficient and effective conduct of such businesses that the customer accounts of Westpac (Jersey) be deemed to be transferred to the Bank without the need for express consent from the customers of Westpac (Jersey);
- (10) As certain existing accounts are situated in or governed by the Law of the Island it is necessary that the transfer of the said customer accounts of Westpac (Jersey) to and, the vesting thereof in, the Bank should be in full force and in effect in the Island;

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

**Interpretation**

In this Law, unless the subject or context otherwise requires -

“the appointed day” means such day as the States appoint pursuant to Article 5 of this Law;

“the Bank” means Ansbacher (Jersey) Limited;

“customer” means any person having a banking account or other dealing, transaction or arrangement with Westpac (Jersey) or the Bank;

“enactment” means an Order in Council, a Law, an Act of Parliament, a Regulation and any order, rule or regulation made under any enactment whether in the Island or elsewhere;

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

“Island” means the Island of Jersey;

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

“security” means any mortgage or charge (whether legal or equitable), debenture, fixed security, floating charge, personal bond, bill of exchange, promissory note, trust receipt, warehouse warrant, guarantee, indemnity, lien, right of retention, hypothec (whether legal, judicial or conventional), security interest created under the provisions of the Security Interests (Jersey) Law 1983,<sup>3</sup> pledge (whether actual or constructive), mandate, hypothecation, right of set-off, right of compensation or undertaking and any other deed, document, conveyance, instrument, arrangement or means (in each case made, granted, arising or subsisting under any applicable law whether in the Island or elsewhere) for securing the payment or discharge of any liability and also includes any agreement or undertaking (whether in writing or not) to give or execute any of the foregoing whether upon demand or otherwise;

“undertaking” when used in relation to Westpac (Jersey) means the business and all existing property and liabilities of Westpac (Jersey);

“Westpac (Jersey)” means Westpac Banking Corporation (Jersey) Limited.

<sup>3</sup> Volume 1982-1983, page 103.

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## ARTICLE 2

**Transfer of Westpac (Jersey) accounts and security to the Bank**

(1) On the appointed day any existing account between Westpac (Jersey) and a customer as is situate in or governed by the law of the Island shall, by virtue of this Law and without further act or deed, be transferred to the Bank and shall become an account between the Bank and such customer with the same rights and subject to the same obligations and incidents (including rights of compensation and set-off) as would have been applicable thereto if such account between Westpac (Jersey) and the customer had continued and such account shall be deemed for all purposes to be a single continuing account as if in all respects the Bank were the same person in law as Westpac (Jersey), but nothing herein shall affect any right of the Bank or of the customer on or after the appointed day to vary the conditions or incidents subject to which any account is kept.

(2) Any existing instruction, order, direction, mandate, notice or representation, power of attorney, consent or undertaking (whether in writing or not and whether or not in relation to an account) given to Westpac (Jersey), either alone or jointly with another person, shall apply and have effect, on and from the appointed day as if given to the Bank or, as the case may be, to the Bank jointly with such other person.

(3) Any instruction, order, direction, mandate, notice, representation, power of attorney, authority, consent or undertaking (whether in writing or not) which is given to Westpac (Jersey), either alone or jointly with another person, on or after the appointed day and which if given or addressed as aforesaid prior to the appointed day, would have related to an existing account between Westpac (Jersey) and a customer shall apply and have effect, on and from the date upon which the same is given as aforesaid, as if given to the Bank, or as the case may be, to the Bank jointly with such other persons.

(4) Any security which is, immediately before the appointed day, held by or in favour of Westpac (Jersey) as security for the payment or discharge of any liability shall, on and from the appointed day, be

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held by or in favour of the Bank and be available to the Bank as security for the payment or discharge of such liability (and, in the case of a security granted for a stated maximum amount, shall have full effect in favour of the Bank up to such maximum amount); and in relation to such security and such liability, the Bank shall, on and from the appointed day, be entitled to the same rights and priorities and subject to the same obligations and incidents as Westpac (Jersey) would have been entitled and subject to if such security had continued to be held by it or in its favour.

(5) Where any security such as is mentioned in paragraph (4) of this Article extends to future advances or future liabilities, the said security shall, on and from the appointed day, be held by or in favour of the Bank, and be available to the Bank, as security for future advances by, or future liabilities to, the Bank to the same extent and in the same manner in all respects as if it had been originally granted in favour of, and had originally extended to future advances by or future liabilities to, the Bank.

(6) The custody or possession of any document, goods or other property held by Westpac (Jersey), or by an agent for or nominee of Westpac (Jersey), as a bailee, depositary or custodian shall, on and from the appointed day and by virtue of this Law, be transferred to the Bank, or, as the case may require, be held by such agent or nominee as agent for or nominee of the Bank, and the rights and obligations of Westpac (Jersey) under any contract of bailment, deposit or custodianship relating to such document, goods or property, or under any other contract or arrangement (whether in writing or not) or deed or other instrument or document regulating custody or possession of the same, shall by virtue of this Law be transferred on the appointed day to the Bank.

(7) Any negotiable instrument or order for payment of money, whether drawn, given, accepted or endorsed before, on or after the appointed day, which is expressed to be drawn on, or given to, or accepted or endorsed by, Westpac (Jersey), or payable at any place of business of Westpac (Jersey) shall have the same effect on and from the appointed day (or, if it be later, the date upon which it is drawn, given,



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accepted or endorsed) as if it had been drawn on, or given to, or accepted or endorsed by the Bank, or payable at the same place of business of the Bank.

(8) Any reference in paragraph (4) or paragraph (5) of this Article to securities held by or in favour of Westpac (Jersey) shall be construed as including a reference to securities held by an agent or trustee for, or a nominee of, Westpac (Jersey) and any reference in either of those paragraphs to securities held by or in favour of Westpac (Jersey) being, on and from the appointed day, held by or in favour of the Bank shall be construed as including a reference to securities which are held by an agent or trustee for, or a nominee of, Westpac (Jersey) being, on and from the appointed day, held by such agent, trustee or nominee as agent or trustee for, or nominee of, the Bank.

ARTICLE 3

**Provisions relating to the transfer of customer accounts  
of Westpac (Jersey)**

(1) The production of a copy of this Law signed by the Greffier of the States, shall, on and after the appointed day, be conclusive evidence in all courts and proceedings and for all purposes whatsoever of the transfer of the customer accounts of Westpac (Jersey) to the Bank and their vesting in the Bank.

(2) The Royal Court shall, when it orders the registration of this Law, also order the registration of a copy of this Law, signed by the Greffier of the States, in the Public Registry of Contracts.

(3) The registration of a copy of this Law in the Public Registry of Contracts shall have like effect as a contract passed before the Royal Court and the title to any property vested in or belonging to or held by Westpac (Jersey) (being property to which Article 2 of this Law applies) which immediately before the appointed day was registered in the Public Registry of Contracts shall vest in, belong to, and be held by, the Bank on and after the appointed day.

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(4) No fees shall be payable under the Departments of the Judiciary and the Legislature (Jersey) Law 1965<sup>4</sup> in relation to the registration of a copy as required by paragraph (2) of this Article.

(5) For the avoidance of doubt it is hereby declared that, subject to paragraph (6) of this Article, the transfer of an interest in immoveable property under and by virtue of this Law shall not -

- (a) constitute an assignment, transfer, devolution, parting with possession or other disposition of that interest for the purposes of any provision relating to assignment, transfer, devolution, parting with possession or other disposition contained in any instrument concerning that interest; or
- (b) invalidate or discharge any contract or security.

(6) If any such transaction as is mentioned in subparagraph (a) of paragraph (5) of this Article would, but for this Law, have required the consent or other authorisation of a Committee of the States under any enactment, that consent or other authorisation shall be taken to have been given, but the transferee shall be bound by any condition, restriction, requirement or other thing in relation to the immovable property subject to or in accordance with which such consent or other authorisation was given, as though the transferee were the same person in law as the transferor.

## ARTICLE 4

**Application of enactments**

Subject to the provisions of this Law, nothing in this Law shall exempt the Bank or Westpac (Jersey) from the provisions of any enactment regulating the carrying on of the business of either of them.

<sup>4</sup> Volume 1963-1965, page 551.

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ARTICLE 5

**Short title and commencement**

This Law may be cited as the Ansbacher (Jersey) Limited (Jersey) Law 199 and shall come into force on such day as the States may by Act appoint.