

@import url(../../../../css/generic.css); EUR-Lex - 61998J0098 - EL

**Avis juridique important**

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# **61998J0098**

????????? ??? ??????????? (????????? ??????) ??? 8?? ??????? 2000. - Commissioners of Customs and Excise ??? Midland Bank plc. - ?????? ??? ?? ?????? ?????????????????  
?????????: High Court of Justice, Queen's Bench Division (Divisional Court) - ??????  
????????. - ????? ????????????????? ????? - ????? ??? ??? ????? ?????? ??? - ???????? ??? ?????  
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????????. - ?????? C-98/98.

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(????????? ??? ??????????? 67/227, ??? 2, ??? 77/388, ??? 17 §§ 2, 3 ??? 5)

## **?????????**

\$\$?? ?????? 2 ??? ?????? ??????? 67/227 ??? 17, ?????????? 2, 3 ??? 5, ??? ?????? ???????  
77/388 ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?? ??? ?????? ??????  
?????? ?????? ??? ?????? ??? ?????? ???, ???' ?????, ????? ?????????? ?? ?????? ??????  
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????? ?? ?????? ??? ?? ?????????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ??????  
?????????, ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?? ?????????? ??  
????????? 2, 3 ? 5 ??? ?????? 17 ??? ?????? ?????? 77/388. ?????, ??? ??????  
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????????? ??????, ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ???  
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( ??, ?????? 24, 33, ??????. 1-2 )

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???? ?????? C-98/98,

?? ?????? ?? ?????????? ??? High Court of Justice (England & Wales), Queen's Bench  
Division (Divisional Court) (?????? ???????), ??? ?? ??????????, ???' ?????????? ??  
????? 177 ??? ??????? ?? (?? ?????? 234 ??), ?? ??? ?????? ???????, ?? ?????? ??  
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*Commissioners of Customs & Excise*

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*Midland Bank plc,*

? ?????? ?????????? ?? ?????? ?? ?????? ?????? ?? ?????? 2 ??? ?????? ??????  
67/227/?? ?? ????????, ?? 11?? ?????? 1967, ??? ?????????? ?? ?????? ??????????  
?? ?????? ???, ?? ?????? ?? ?????? ?????? ?????? ?????? (?? ???. ???. 09/001, ?. 3),  
?? 17, ?????? 2, 3 ?? 5, ?? ?????? ?????? 77/388/?? ?? ?????? ??? 17??  
??\_?? 1977, ??? ?????????? ?? ?????? ?????? ??? ?????? ?????? ???, ?? ?????? ?? ??  
????? ?????? ?????? - ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????: ??????????  
????????? ??? (?? ???. ???. 09/001, ?. 49),

?? ?????????? (?????? ??????),

?????????? ??? ??? R. Schintgen, ?????? ????????, G. Hirsch (???????) ??? H. Ragnemalm, ???????,

?????? ??????????: A. Saggio

?????????: L. Hewlett, ??????? ????????????,

?????????? ????? ??? ??????? ??????????? ??? ??????????:

- ? Midland Bank plc, ?????????????? ??? ??? R. Cordara, QC, ??? P. A. McGrath, barrister, ???' ??????? ??? P. Kelly, solicitor,

- ? ?????????? ??? ??????? ??????????, ?????????????? ??? ??? J. E. Collins, Assistant Treasury Solicitor, ??????????? ??? ??? K. P. E. Lasok, QC, ??? ??? ?. Hall, barrister,

- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? E. Traversa, ?????? ??? ?????? ????????, ??? ??? F. Riddy, ?????? ??????? ?????? ?????? ?????? ?????????? ??? ??? ????????,

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???? ??????? ??? ?????????? ?????????????? ??? Midland Bank plc, ??? ?????????? ??? ?????????? ??????? ??? ??? ?????????? ??? 3?? ?????? 1999,

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## ????????? ??? ????????

1 ?? ??????? ??? 30?? ?????? 1997, ? ?????? ??????? ??? ?????????? ??? 3 ??????? 1998, ?? High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court), ???????, ???' ??????? ??? ?????? 177 ??? ??????? ?? (?? ?????? 234 ??) ????, ??????????? ??????? ?? ??? ??? ?????? ??? ?????? 2 ??? ?????? ??????? 67/227/??? ??? ??????????, ??? 11?? ??????? 1967, ??? ?????????????? ??? ??????????? ??? ???????, ??? ??????? ??? ?????? ?? ??? ?????? ?????? (?? ???, ???, 09/001, ?, 3, ??? ???: ????, ???, 09/001, ?, 3, ??? 17?? ??\_?? 1977, ??? ??????????? ??? ?????????? ??? ???????, ??? ??????? ?? ??? ?????? ?????? - ??? ?????? ??? ?????? ?????? ??????????? ??? ?????: ??? ??????? ?????????? ??? (?? ???, ???, 09/001, ?, 49).

2 ?? ?????????? ??? ??????? ??? ??????? ??????? ??? ?????? ??? Midland Bank plc (???: Midland) ??? ??? Commissioners of Customs & Excise (???: Commissioners), ??????? ?? ?????? ?????????? ??? ?????? ?????????? ??? (???: Commissioners), ??? ???????, ??? ??? ??????? ??? ??????? ??? ??????? ??? ?? ??? ??? ?????? ??? ???????, ??? ???????.

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3 ?? ?????? 2, ??????? ??????, ??? ?????? ??????? ??????:

«?? ??? ?????? ?????????? ? ?????? ?????????????? ??????, ?????????????????? ??? ??? ?????? ?????? ???  
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????? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ?? ??? ?????? ?????????? ??? ????.»

4 ? ?????? 77/388 ?????????????? ?? ??? ?????? 91/680/??? ??? ??????????, ??? 16??  
?????????? 1991, ??? ?? ?????????? ??? ?????? ?????????? ?????? ?????????????? ???  
??? ?? ???????????, ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????? 77/388  
(?? L 376, ?. 1, ??? ????: ??? ?????).

5 ??????? ?? ?? ?????? 17 ??? ?????? ???????, ?? ?????? «?????? ?? ?????? ??? ?????????? ???  
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«1. ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ? ?????????? ???  
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2. ??? ?? ?????? ??? ?? ?????? ? ?? ?????????? ?????????????????? ??? ??? ?????????????? ???  
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??? ???, ??? ??? ?????? ??? ?????? ????:

?) ??? ?????????? ? ?????????????? ??? ?????????????? ??? ?????? ??? ??????, ??? ???  
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3. ?????? ?? ?????? ??? ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ???  
??????, ??? ??????? 2, ??????? ? ?????????? ??? ?????? ?????????????? ???, ??? ??  
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?) ?????? ??? ?? ?????????????? ??? ?? ?????? 13 ??? ? ?????????? ??? ? ??? ?,  
????????????? 1 ??? 5, ??? ? ?????? ??? ?????????????? ??? ?????? ??? ?????????? ???  
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5. ??? ?????? ?? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?????????????? ???  
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??? 3, ?? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ??? ??????, ?? ?????? ???  
????????? ??????? ??? ??????, ? ?????? ?????? ??? ??? ??? ?? ?????? ??? ??????  
????????????? ????, ?? ?????? ??????? ??? ??? ??? ?????????? ??? ?????? ??? ??????  
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??????, ?? ?????? 17, ?????????? 5, ?????????? ??? ?????????? ??? ?????? ??? ???  
?????? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??? ??????  
????? ??????? ??? ?????? ?????????? ??? ??????.

? ?????? 13, ?, ??????? ?\_, ??? ????? ??????, ??? ????? ?? ????? 17, ?????????? 3, ?????? ?\_, ??? ????? ??????, ?????????? ?????? ?????? ??? ?????????????? ?????? ??? ??????.

? ?????? ?????????? ??????

6 To ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ????? 17, ?????????? 3, ?????? ?\_, ??? ??? ?????? ?????? ?????????? «????????? ??????????» ??? ?????? ??? ?????? ??? ?????? ?? ?????? ???, ?????? ?????? ?? ?????? ???, ?????? ?????? ?? ?????? ??? ?????????? ?????? ?????? ???, ??? ?????? ?????? ?? ?????? ???, ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???.

7 ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? 17, ?????????? 5, ??? ?????? ??????, ??? ??? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????.

8 ? Midland ?????? ?????????? ?????? ???????, ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ?????? ?????? ??? ?????? Samuel Montagu & Co. Ltd (??? ?: Samuel Montagu), ? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??????.

9 ?? 1987, ? Samuel Montagu ?????? ??? ?????? ?????? ?????? ?????????? ??? ??? Quadrex Holdings Inc. (??? ?: Quadrex), ?????? ?????????? ??? Delaware (????????? ??????). ? Quadrex ?????????? ?? ?????????? ?? Mercantile House Holding Ltd (??? ?: Mercantile), ?????? ?????? ??? ?????????? ??? ?????????? ??? ??????. ???, ? British and Commonwealth Holding plc (??? ?: B & C) ?????????? ?????? ??? ??? ?????? ??? Quadrex. ??? ?????? ?? 1987, ? Quadrex ??? B & C ?????? ?????? ?????? ??? ??? Quadrex. ??? ?????? B & C ?? ?????? ?? Mercantile ??? ?????? ?? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? Quadrex. ??? ??????, ? B & C ?????? ??? ?????? ??? Mercantile. ???, ? Quadrex ??? ?????? ?? ?????? ??? B & C ?? ?????? ???, ??? ?????? ??? Quadrex. ??? ??????.

10 ???, ?? 1988 ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??? B & C ?????? ??? Quadrex ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ? Quadrex ?????????? ?? ?????? ?? Samuel Montagu. ? B & C ?????? ??? ?????? ?????? ?????? ?????? ??? Samuel Montagu ??? ?????? ??? ?????? ??? ?????? ??? Samuel Montagu, ?????? ?? ??? ?????? ?????????? ??? ?????? ??? Quadrex. ? ?????? ??? ?????? ?????? ??? B & C ?? ?????? ???, ??? ?????? ??? Quadrex. ??? ?????? ??? 1994.

11 ??? ?????? ??? ?????? Quadrex ??? B & C, ?? ?????????? ?????? Clifford Chance ?????? ?????? ?????? ??? Samuel Montagu. ??????, ??? ??? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Samuel Montagu ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? 1988 ?? 1995 ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

12 ? Midland ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? Samuel Montagu ??? Quadrex, ?????? ? ?????? ?????? ?????? ??? ?????? ???, ?????? ??? ??

?????? 17, ??????????? 3, ??????? ?\_, ??? ?????? ????????. ????????, ? Midland ??????? ??  
?????? ?? ??????? ?? ??????? ?? ????? ?? ????? ?? ????? ?? ????? ?????????? ?? ????? ?? ????? ??  
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13 ?? Commissioners ??????? ??? ? Samuel Montagu ??? ?????????????? ??? ??? ???????  
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?????????. ???????, ?????????? ??? ? Midland ?????????? ??????? ??????? ??? ??  
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14 ? Midland ??????? ?????? ???????? ??? VAT and Duties Tribunal, ?????????????? ?????? ???  
??? ?? ?????? ??? ??????? ?????????? ??? ??????? ?? ?????????? ??????? ??????? ???  
?????? ??? ??? ?????????????? ? Samuel Montagu ??? ??? Quadrex. ?? ??????? ???  
15?? ??\_?? 1996, ?? ?????????? ??? ??????? ?? ??????? ??? Midland ?????????? ???  
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15 ?? Commissioners ??????? ?????????? ???? ??? ?????????? ?????? ?????? ?????? ??? High Court of Justice. ??????? ??? ???? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ???  
????????? ??? ??? ?????? ??? Samuel Montagu ?????? ??? ?????? ?????????? ???  
????????? ??? ?????? ??? Samuel Montagu ??? ?????????? ?????????? ???  
???? Quadrex. ????, ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???  
Samuel Montagu. ?????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ??????  
????????? ???????, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
?? ?? ?????? 17, ?????? 5, ??? ?????? ??????.

16 ??? ?? ????????, ?? High Court of Justice, ?????????? ??? ? ??????? ??  
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?????? ?? ??????? ??, ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??  
????????? ?? ??????? ?? ?????????? ?? ?????????? ??:

«???? ??? ????? ????? ?????????? ?? 67/227/??? ??? ????????????, ??? 11?? ?????????? 1967,  
????????????? ?? ??? ?????? 2, ??? ??? ?????? 77/388/??? ??? ????????????, ??? 17?? ??\_??  
1977, ??????????? ?? ??? ?????? 17, ?????????? 2, 3 ??? 5, ??? ?????? ?????? ??  
????????? ?????????? ??? ??????????;:

1) ?????? ??????????? ?? ?????????????? ? ?????? ?????? ?????? ?????? ?????????????? ?????? ?????? ??  
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) ?? ?????????? ? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

? ) ?? ??????????? ? ?????? ??? ??????????? ?????;

2) ?? ?????? ??????????? ???????? ?? ?????? 1? ??? 1?, ???? ?????? ? ???? ??? ??????  
????? ?????? ???, ???????????, ??? ?????????? ?????????? ??? ?????? ???  
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?) ?????????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ???  
????????? ??? ?? ?????????? ??? ?? ?????? 17, ?????????? 2, 3 ?? 5 (???, ?? ??????????  
?????????, ??? ?? ?????????): ???

?) ?????????? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

17, ?????????? 2 ? 3, ?????????????? ??? ?????? 17, ?????????? 3, ?????????? ?;

3) ?? ????? ??????? ??????? ??? ??????? 1? ? 1?:

?) ??? ????? ? ?????? ??? ?????? ?? ?????????? · ???

?) ??? ?????????? ?????????????? ??? ?????? ??? ?????????????? ?????????????????? ???  
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- ???????? ?? ???????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? 17, ?????????? 2, 3 ??? 5 (???, ?? ??????????  
?????????, ??? ? ???????)- ???

- ?????????? ? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????????????? ??? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???  
17, ?????????? 2 ? 3, ?????????????? ??? ?????? 17, ?????????? 3, ?????????? ?;»

??? ??? ?????? ??????????

17 ?? ?? ?????? ???????, ?? ?????? ?????????? ???' ?????? ?? ?? ?????? 2 ??? ??????  
?????? ?? 17, ?????????? 2, 3 ??? 5, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????????????? ?????? ??? ?????? ?? ??????????  
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?? ??? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ???  
????????? ???.

18 ? *Midland*, ? ?????????? ??? ?????????? ?????????? ??? ? ?????????? ?????????? ??? ?????? ??  
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19 ???????????, ??????????? ?? ??????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??  
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?????????? ?? ?????? ??? ?????? ??? ?????????????? ???, ??? ?? ?????? ??? ?? (??., ???????,  
????????? ?? 14?? ?????????? 1985, 268/83, *Rompelman*, ??????? 1985, ?. 655, ?????? 19.  
?? 15?? ?????????? 1998, C-37/95, *Ghent Coal Terminal*, ??????? 1998, ?. ?-1, ?????? 15, ???  
?? 21?? ??????? 2000, C-110/98 ??? C-147/98, *Gabelfrisa* ??., ??????? 2000, ?. ?-1577,  
????? 44). ?????, ???' ???????, ? ?????????? ??? ?????? ??? ?????, ??? ? *Samuel  
Montagu*, ??????????? ?????????????? ???, ??????? ?? ?? ?????? 13, ?, ??????? ?\_,  
????? 1 ??? 5, ??? ?????? ??????, ??? ??? ?????????? ??? ?????? 17, ?????????? 3,  
????????? ?\_, ??? ?????? ?????, ??? ??? ?????, ?????? ??? ?????? ??? ?????????? ?????, ??????  
????????? ??? ?? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ??? ??  
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20 ??? ?????? ??? ?????? ?? ???????????, ?? ?????? 17, ?????????? 5, ??? ?????? ???????, ???  
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????????? ?? ?????????????? ??? ?? ?????? ?????? ??? ?????? ??? «??? ??? ??????????  
????????????? ??? ?????? ?????? ?????? ?????? 2 ??? 3, ?? ??????  
????????? ??????? ??? ??????, ??? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
?????». ?? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? «??? ???  
????????????? » ?????????? ???, ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ??  
????????? 2, ?? ?????????? ??? ?????? ?? ?????? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ??  
????? ??? ?????? ??? ?????????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ??  
????? ?????? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? (??.

?????? ?? 6?? ??????? 1995, C-4/94, BLP Group, ?????? 1995, ?. ?-983, ?????? 18 ??? 19).

21 ? ?????????? ??? ?????????????????? ??? ?? ?????? 2 ??? ?????? ????????, ??????? ?? ??  
????? ?????????????? ? ??????? ?????? ??? ?????? ??? ???? ? ?????? ?????????? ??????? ?? ??????  
??? ??????? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ???????.

22 ?????, ????, ?????? ?????? ??, ?? ???????????, ?? ?????????? ??????????, ??? ????  
????????, ?????????? ?????????? ?????? ??, ?? ? ?????????? ?????? ??????????  
????????????? ??, ?? ?????? ??, ?? ?????????? ?????? ?????? ??, ?? ?????????? ?????? ??, ??  
????? ??, ?? ?????????? ??, ?? ?????? ??, ?? ?????? ?????? ??, ?? ?????????? ??, ?? ??????  
????????? ??, ?? ?????? ??, ?? ?????????? ??, ?? ?????? ??, ?? ?????? ??, ?? ?????????? ??, ??  
?? (??., ????, ????, ??, ?? 29??, ?????????? 1996, C-110/94, INZO, ????, 1996, ?,  
?-857, ????, 20 ??, 21. Ghent Coal Terminal, ?????????? ?, ?? 20, ??, ?? 8??  
????? 2000, C-396/98, Schloßstraße, ????, 2000, ?. ?-4279, ????, 42).

23 ??? ?? ?????????? ????, ???' ??????? ?? ?? ??? ?????????????? ???????,  
?? ??????? ?? ?????????? ??????? ?? ?? ?? ?????? ?? ?????????? ?????? ??  
????? ?????????????? ?? ?? ?? ???? ?????????????? ?????? ?? ?????????? ??????  
?????????.

24 ????????, ??? ????. ????????. ?????? ?? ????. ? ????????. ??? ?? ?????? 2 ????. ??????  
?????? ?? 17, ????????. 2, 3 ??? 5, ??? ????. ????????. ?????? ?? ?????? ??, ???'  
?????, ????. ??????. ????????. ? ??????. ??????. ??????. ??????. ??????. ??????. ??????. ??????. ??????.  
????? ? ??????. ??????. ??? ??????. ??????. ??????. ??????. ??????. ??????. ??????. ??????. ??????.  
????? ??????. ??? ??????. ??????. ??????. ??????. ??? ?? ????. ??? ?? ??????. ??? ??  
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25 ?????????? ??? ?? ??????? ?????????????? ??????, ?? ?? ?????? ?????? ??? ??????????  
???????????, ?????????????? ?? ??? ???? ?? ?????? «?????? ??????», ? Midland, ? ??????????  
??? ?????????? ?????????? ?? ? ?????????? ?????? ?????????? ??? ??? ?????? ?????????? ??  
????? ?????????? ?????????? ?? ?????????? ?????? ?????????? ??????. ???????,  
????????????? ?? ???? ?? ?????????? ?? ?????????? ?? ?????????? ?????????????? ???????????, ???  
????????? ?? ???? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ???????????, ??? ?? ???? ??  
???????????, ??? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?????? ?????????? ???  
????? ??? ?? ?????? ?? ?????? ?? ?????? ?? ??????. ??? ?????? ??????????  
????????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
????????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
?? ????????

26 ????? ?????? ?? ??????? ????????, ????????, ?\_, ??? ??????? ????????????, ? Midland, ?  
????????? ?? ??????? ????????, ??? ? ??????? ?????? ?????? ?????? ?????????? ?????????? ??  
? ??????????? ?? ?????? ??? ?????????????? ?????????? ?????? ??? ?????????? ??????????  
????????? ?? ??????? ?? ??????? ?????? ?????? ?????????? ?????? ?????? ?????????? ??  
????????? ?????????? ?? ?? ?? ?????????? ?? ?????? ??? ?????? ?? ?????? ??? ?????????? ?? ??  
????????? ?? ?? ?? ??????? ?? ??????? ????????, ?????? ?? ?????????? ?????? ??? ??????????  
????????? ?????????? ?? ?? ?????????????? ?? ?????????? 2, 3 ? 5 ??? ?????? 17 ??? ??????  
???????. ????, ?? ???? ???' ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ??  
????????? ?????????? ?? ?????? ?? ?? ?????? ??? ?????? ?? ?????? ?? ?????????? ??  
????????????????? ?? ?? ??? ?????????? ?? ??????.

27 ?? ?? ????????, ??\_?, ?? ??????? ????????????, ??' ??????? ?? ?  
?????????? ??, ?? ?????????????? ?????????? ??????? ?? ??????? ??  
????????? ??, ?? ??????? ??, ?? ???????, ?? ???????, ?? ??????? ??  
????????? ??, ?? ???????, ?? ???????, ?? ???????, ?? ??????? ??  
????????? ??, ?? ???????, ?? ???????, ?? ???????, ?? ??????? ??  
????????? ??, ?? ???????, ?? ???????, ?? ???????, ?? ??????? ??  
????????? ??, ?? ???????, ?? ???????.

28 ? Midland, ? ?????????? ??? ?????????? ?????????? ??? ? ?????????? ?????????? ???, ???  
????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??? ??????, ?? ??????????????  
????????? ?? ??? ???? ?? ?????????? ?????????? ?????? ?????? ?????? ? ?????? ?????? ?????? ???  
??? ?????? ??????. ??? ??????? ???, ? Midland ??????? ??? ? ?? ??? ?????? ?????? ??????????  
???? ?????????????? ?????????? ?????? ??????? ??? ??????, ??? ? ?????? ?? ?????? ??  
????????? ?????? ??? ??????? ??? ?????? ? ?????????????? ??? ?? ?????????????? ??  
???????, ??? ? ?????? ?????????? ??? ?????? ? ?????? ?????? ?????? ??? ??????????????????  
???. ????????, ? ??????? ??? ??????? ?????????? ?????????? ?????????? ??? ?? ??????  
????????? ??? ?????????? ?? ?????????? ??? ?????? ? ?????? ?????? ?????????? ??????????  
????????????? ??? ?????????? ?????, ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???  
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????  
????????????? ??? ??????, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ?????? ?????? ???  
??? ?????? ???, ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???

29 ?????????????? ? ??????????? ???, ??????? ?? ?? ??????????, ??????? ??? ??????? ??? ??  
??? ?????????? ??? ?? ?????? 2 ??? ?????? ??? ??? ?????? ?????? ?????? ?????? ???, ? ?? ??????????????  
?? ??? ?????????? ??? ?? ??????? ? ?? ???????, ?????????????? ??? ?? ??? ??? ??  
????????? ?????????? ?? ??????? ??? ??????? ?????????? ?????????? ??? ?????????? ??? (??.,  
??????, ??????? ??? 6?? ??????? 1995, C-62/93, BP Soupergaz, ??????? 1995, ?. ?-1883,  
????? 16).

30 ??? ??? ?????? ??? ?????? ??? ??? ??? ?????????????? ??? ??? ?????? 19 ??? ??????????????????  
????????? BLP Group ??????, ??????? ?? ??? ?????? ??? ?? ?????? ?????? ?????????? ??????????  
?? ?????????? ?????? ?? ?? ?????????????? ?????????? ?????? ?? ?????? ?????? ?????? ?? ???  
????????????? ??????, ???????? ??? ?? ?????????? ?????????? ?????????? ??? ?? ??? ?????????? ???  
?? ?????? ?? ??? ?????????? ?????????? ??? ?? ?????????????????? ?????? ??? ?? ??? ?????? ???  
?? ?????? ?? ??? ?????? ??? ?????????? ?????? ?? ?????? ?????????? ?????? ??? ?? ??????????  
?? ?????????? ??? ?? ?????? ??? ?????????? ?????? ?? ?????? ?????????? ?????? ??? ?? ??????????  
?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ??? ?? ?????? ?????????? ?????? ??  
????????? ?????? ??? ?? ?????????? ?????? ?? ?????? ?????????? ??? ?? ?????? ???, ??? ?? ??? ??????????  
?? ?????????? ??? ?? ?????? ??? ?????????? ?????? ?? ?????? ?????? ?????????? ?????? ???  
????????? ?????? ??? ?? ?????????? ?????? ?? ?????? ?????????? ?????? ?? ?????? ??? ??????????  
?? ?????????? ??? ?? ?????? ??? ?????????? ?????? ?? ?????? ?????????? ?????? ???

31 ????????, ????????, ????, ??, ?????????????? ? Midland, ???????, ???, ?????????? ???  
????? ??? ??, ??? ?????? ??? ?????????????? ?????????? BLP Group ?????? ??? ?????? ???  
??? ?????????? ??? ?????????????? ? ?????????????? ??? ?????? ??? ??? ?????????????? ???  
?? ????. ??????, ????? ?????? ??? ?? ?????????????? ??? ??? ??????. ???, ?? ?????? ??? ??  
???? ?????????? ?????? ????? ?????? ??????. ?????, ?? ?????? ??? ??  
????????? ?????? ??? ?? ?????????? ??? ?????????? ?? ?????? ??? ?????, ?????? ??  
????? ?????? ?????????? ??? ?? ?????? 2 ?? ?????? ??????. ?? ?? ??? ?????????? ???  
????? ?????????? ?????? ?????? ?? ??? ??????. ??????????, ?? ?????? ??? ?????????? ???  
????????? ?????? ??? ?????????? ?????? ??? ?????????????? ??? ??? ???, ?? ??????, ???  
????????? ?????? ??? ?????? ??? ?????????? ??? ??????????????. ????????, ??????  
????? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ???

???? ???? , ????? ?? ??????? ?????????? ??? ?? ??????? ????? ?? ?????? 17, ?????????? 5, ???  
????? ??????? ??? ? ? ?????? , ??????? ?? ? ? ?????? ???, ?? ?????? ?????? ?? .

33 ????????, ??? ??????? ??????? ?????? ?? ?????? ? ?????????? ??? ??? ?????? ???????????  
?????????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ??? ??????  
?????????????. ??????????? ??? ?????? ??? ?????????????? ?????????? ?????????? ??? ??????  
????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ??  
????????? ?????????? ??? ??? ?????????? ?? ?????? ??? ?????? ??? ??? ?????????? ??? ??? ????  
????????? ??? ??? ???????????, ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ??????  
????? ?? ??? ?????? ??? ?????????? ?????????? ??????????, ?????? ?? ?????????? ?? ??????????  
????????? ?????????? ??? ?? ?????????????? ?? ?????????? 2, 3 ? 5 ??? ?????? 17 ??? ??????  
??????. ?????, ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??  
?? ??? ?????????? ?????????? ??? ?????????????? ?? ??????????, ?? ?? ?????????? ?????? ???  
????????????????? ??? ??? ?????????????? ?????????? ??? ?????????? ?????????? ??????????,  
????? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???,  
????? ? ?????????????? ??? ?????? ??????????????, ?? ?????????????? ??????????, ??? ??  
????????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ??????  
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34 ?????????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????, ?????????? ?  
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35 ?? ?????? ??? ?????? ?????????????? ? ?????????? ??? ?????????? ?????????? ??? ? ??????  
?????????, ??? ???? ??? ? ?????????? ??? ?????????? ?????????????? ??? ??????????, ???  
???????????. ?????????? ??? ? ?????? ?????????? ??? ???? ?? ??? ?????? ??? ?????? ???  
????? ??? ???? ??? ?????????? ?????????????? ??? ?????????? ??? ?????? ??? ??????  
???????????, ?' ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ???.

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?? ?????????? (???????? ????),

?????????? ?? ?? ?????????? ?? ?? ??????? ?? ??????? ?? 31?? ??????? 1997 ?? High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court), ??????????:

1) ?? ?????? 2 ???. ?????? ??????? 67/227/???, ??? ???????????, ??? 11?? ??????? 1967,  
????? ??? ?????????????? ??? ??????????? ??? ?????????? ??? ???????, ??? ?????????? ?? ??? ???? ??????  
?????? ???????, ??? 17, ?????????? 2, 3 ???. 5, ??? ?????? ??????? 77/388/???

??????????, ??? 17?? ??\_?? 1977, ????? ?????????????? ???. ?????????????? ???. ?????????? ???.  
??? ?????????? ???. ??? ????? ?????? ?????? ?????? - ?????? ?????? ?????? ?????? ??????????????  
?????: ?????????? ?????????? ????, ?????? ??? ?????? ???, ???' ?????, ?????? ?????????? ?  
????? ?????? ?????? ?????? ????? ?????????????? ?????? ??? ?????? ? ??????????????  
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ????.  
?????????? ? ?????? ??? ?????????? ????.

2) ?????????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??  
????? ??????? ?? ?????? ??????????????. ?????????????? ??? ?????? ??? ??????????????  
????????? ??????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ?? ???? ??????  
????????? ??????? ?? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ?????????????? ??? ??  
????????? ?? ?????? ??? ?????????? ?????? ?????? ?????? ?? ??? ?????????? ??? ?? ??????????, ????  
????? ?? ?????? ??? ?? ?????????? ?????? ?????? ?????? ?? ??? ?????? ??? ?????????? ??? ??????  
?????????, ??? ?? ?????????? ?? ?????? ?????????? ?????? ?????????? ??? ?? ?????????????? ??  
????????? 2, 3 ? 5 ??? ????? 17 ??? ????? ?????? 77/388. ????, ??? ??????  
????????? ??? ?????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????????????? ??? ?????? ?????????? ?????????? ??? ?????????, ?? ??  
????????? ??? ?????? ??? ?????????????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ??????  
????????? ??????????, ??? ?????? ?????? ?????????????? ??? ?????? ?????? ?????? ?????????? ???  
????????? ????, ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????????? ??? ??????????????, ?? ??????????????  
?????????, ??? ?? ?????????? ?? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??????????  
????? ??? ?????? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????