

@import url(../../../../css/generic.css); EUR-Lex - 61998J0408 - EL

## Avis juridique important

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# 61998J0408

?????? ??? ?????????? (?????? ?????) ??? 22?? ?????????? 2001. - Abbey National plc  
???? Commissioners of Customs & Excise. - ?????? ??? ??? ?????? ??????????????  
?????????: High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court) -  
????????? ????????. - ??? - ????? 5, ?????????? 8, ??? 17, ?????????? 2, ?????????? ?, ??? 5,  
??? ?????? ??????? ??? - ?????????? ?????? - ??????? ??? ?????? ??? ??? ??????  
??? ??? ?????????? ??? ?????????? ????? ?????????????? ??? ?????? ??? ?????? ???  
????????????? - ????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????????? ??? - ?????? C-408/98.

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???? ??? ?????? ?????????? ?????? ?????? ?????????? ?????? ?????? ??? ??????  
????????????? - ????? ?????? ?? ?????? ?????? ?????? ?? ?????? ??? ??????????????  
????????????? ??? ?????? ?????? - ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ???  
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(?????? 77/388 ??? ??????????, ??? 5 § 8 ??? 17 § 5)

## ?????????

\$\$\$\$\$? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??? ?????? ?? ?????? 5,  
????????? 8, ??? ?????? ?????? 77/388, ??? ?????????? ??? ?????????? ??? ?????? ???  
????, ??? ??????? ?? ??? ?????? ?????? ???????, ?????? ? ?????????? ??? ?????? ???  
????? ?????? ?????????? ??? ??? ?????? ?????? ???????, ?? ?????? ??? ?????? ???  
????????? ? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??  
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????????????? ??? ??? ?????? ???, ???????, ?????? ???' ?????? ?????? ??? ?????? ???  
????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???, ?? ??  
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????????? ??? ??? ?????????? ????????, ??? ?? ????? 17, ?????????? 5, ??? ??????  
??????? 77/388 ?????????? ??? ?????? ?????????????? ?? ?????? ?? ?????? ??? ?????  
????????????? ??? ?????? ??? ?????????? ??? ??????? ?? ??? ?????? ?????? ????. ????, ?? ??  
????????? ?????????????? ??? ?????????????? ?????? ?????????????? ??? ?????? ?????????????? ???  
????????????? ??? ?????? ? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?? ?????  
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????? ?? ?????? ?? ?????? ?????????????? ?' ???? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????  
????????????? ????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????  
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( ??, ??? 42 )

## ?????????

???? ?????? C-408/98,

??? ??? ?? ?????????? ??? High Court of Justice (England & Wales), Queen's Bench  
Division (Divisional Court) (?????? ???????), ??? ?? ??????????, ???' ?????????? ??  
????? 177 ??? ??????? ?? (?? ?????? 234 ??), ?? ??? ?????? ???????, ??? ??????? ??  
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*Abbey National plc*

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*Commissioners of Customs & Excise,*

? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? 5, ?????????? 8, ??  
17, ?????????? 2, ?????? ?\_, ??? ?????? ?????? 77/388/?? ?? ??????????, ??? 17??  
??\_?? 1977, ??? ?????????? ?? ?????????? ??? ?????????? ?? ?????? ????, ??? ?????????? ?? ??  
????? ?????? ?????? - ?????? ?????? ?????? ?????? ?????????????? ?????: ??????????  
????????? ??? (?? ????. ????. 09/001, ?. 49),

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

????????? ??? ??? D. A. O. Edward, ?????????? ??? ?????? ???????, P. Jann ??? L.  
Sevón (??????), ???????,

?????? ??????????: F. G. Jacobs

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

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

- ? *Abbey National plc*, ?????????? ??? R. Cordora, QC, ??? D. Southern, barrister,  
?????? ?????????? ??? S. Rose, solicitor,

- ? ?????????? ??? ?????? ??????????, ?????????????? ??? ??? R. Magrill, ??????????????  
??? ??? K. Parker, QC, ??? ??? ?. Hall, barrister,

- ? ?????????? ??? ??? ?????, ?????????????? ??? ??? ?. A. Fierstra,

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

????????? ?????? ??? ?????? ??????????????,

????? ??????? ??? ??????????? ?????????????? ??? Abbey National plc, ??? ??????????? ???  
????????? ?????????? ??? ??? ??????????, ?????????????? ??? ??? R. Lyal, ??? ??  
?????????? ??? 23?? ??????????? 2000,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 13?? ?????? 2000,

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1 ?? ??????? ??? 2?? ?????????? 1998, ?? ??????? ??? ?????????? ??? 17 ??????????  
1998, ?? *High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court)*,  
???????, ???' ?????????? ??? ?????? 177 ??? ?????????? ?? (?? ?????? 234 ??), ???  
????????????? ?????????? ?? ????? ??? ???????? ??? ?????? 5, ?????????? 8, ??? 17,  
????????? 2, ??????? ?\_, ??? ????? ??????? 77/388/??? ??? ??????????, ??? 17?? ??\_??  
1977, ??? ?????????? ??? ?????????? ??? ?????? ?????, ??? ?????? ?? ??? ?????? ?????  
????? ?????? - ??? ?????? ?????? ????? ?????????? ?????: ?????????? ??????????  
????? (?? ???, ???, 09/001, ?, 49, ??? ????: ??? ??????).

2 ?? ?????????? ??? ??????? ??? ??????? ??????? ??? ?????? ??? *Abbey National plc* (???, ????: *Abbey National*) ??? ??? *Commissioners of Customs & Excise* (????????? ??????? ????, ????: *Commissioners*) ??????? ?? ?? ??????? ?????????? ??? ?????? ??????????????? ?????? (???, ????: ??) ??? ?????????? ??? ??? ??????? ??? ??? ?????????? ?????????????? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????? («as a going concern»).

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

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3 ?? ?????? 2, ??????? ??????, ??? ?????? ??????? 67/227/??? ??? ???????????, ??? 11??  
?????? 1967, ??? ???? ?????????????? ??? ??????????? ??? ??????? ???, ??? ?????????? ??  
???? ?????? ?????? ??????? (??. ????. ????. 09/001, ?. 3), ??????? ??? «?? ??? ?????? ??????? ?  
????? ?????????????? ????, ?????????????? ??? ??? ?????? ??? ?????? ???? ??????? ? ??? ??????????,  
?? ??? ?????????? ??? ?????? ??? ? ??? ?????? ?????? ??? ???????????, ?????? ?????????? ???'  
????????? ??? ?????? ??? ?????? ?????????????? ????, ? ?????? ?????????? ?????? ??? ??????? ?? ??????  
?? ?????? ?????????? ???, ?? ?????? ?????????? ??? ??????».

4 ????? ?? ?????? 2, ?????? 1, ??? ?????? ??????? ?????????? ?????? ?? ?? ?????????? ??????  
??? ?? ?????? ???????, ??? ?????????????????? ?? ?????? ?????? ??? ?????? ??? ?????? ???  
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5 ??????? ?? ?????? 5, ??????????? 8, ??? ?????? ???????;

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?? ???? ??? ??????????, ??? ?????????? ??????????, ?? ?????????? ??? ?????????? ??? ?????????? ???  
???? ?????????? ?????????? ??? ??? ?????????? ?????, ??? ?????????? ??? ?????????? ??? ?????????? ???  
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6 ??? ?? ??? 13, ?, ??? ??????, ??????? ?\_, «?? ??? ?????? ??? ?????????? ?? ??? ?????? ???  
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
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7 ?? ??? 17, ?????????? 2, ??????? ?\_, ??? ??? ?????? ?????? ??????:

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

) ??? ?????????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????? ?????? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???»..

8 ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
??? ??? ?????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? 17, ?????????? 5,  
????? ??????, ??? ?????? ?????? ?????? ?????? ?????? ??? «? ?????? ?????? ?????? ??? ?????? ???  
????? ?????? ?????? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
????? ??? ?????? ?????? ». ?? ?? ?????? 17, ?????????? 5, ?????? ??????, ???  
????? ??????, «? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? 19»..

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9 ??? ?? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????  
??? ?????? ??? ?????? ?? ?????? 5, ?????????? 8, ??? ?????? ??????, ??????  
????? ??? 5, ?????????? 1, ??? Value Added Tax (Special Provisions) Order  
(????????? ??? ?????? ?????? ?????? ??? ?????? ???, SI 1995, ?. 1268, ??? ????: VAT  
Order), ?? ?????? ?????????? ?? ?????? 5, ?????????? 1, ??? Value Added Tax (Special  
Provisions) Order (SI 1992, ?. 3129). ?? ?? ?????? ?????? ???, ??? ?????? ??? ??????  
????????? ???, ?? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???, ??? ?????? ???  
????????? («as a going concern»), ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???  
????? ??? ?? ?????? ??????. ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???  
????????? ???, ?? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???  
????????? ???, ?? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???  
?? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???.

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

10 ? Scottish Mutual Assurance plc (??? ????: Scottish Mutual), ??? ?????????? ?????? ???  
????? ???, ??? ?????? ??? 100 % ??? Abbey National, ??? ?????? ??? ?????? ???  
??? ??? ?????? ???.

11 ?????? ??? ?????????? ??? ?????? ?????? ???, ? Scottish Mutual ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???  
????????? ??? ?????? ?????? ???, ??? ?????? ??? ?????? 125 ??? ?? ??????  
????????? ??? ?????? ??? ?????? Atholl House, ??? Aberdeen, ?? ?????? ??????  
?? ?????? ??? ??????. ? Scottish Mutual ??? ?????? ??? ?????? ??? ?? ??? ???

?????????? ?? ?????????? ?? ?? Atholl House, ??????? ?? ?? ?????????? ?? ?? ???????  
????????? ?? ?? ?? ????? ?????????? ?? ?? ?????????? ?????? ?? ?? ?? 13, ?, ????, ????,  
????????? ?\_, ?? ????? ??????, ?? ?? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?? ??????  
?? ?? ??????? ?? ?? ?????? ?? ?? ?????? ?? ?? ?? ?????? ?? ?? ?????? ?? ?? ?????? ?? ?? ??????

12 ?? ??????? ??? 16?? ??????????? 1992, ? Scottish Mutual ?????? ?? ??????????? ??? ??  
?????? ?? 125 ????, ????, ?? ?? ??????? ?? ?? ??? ???????????, ??? 5,4 ???????????  
????? ??????? (GBP) ?? ??????? ?? ??????? ?? ??????? ?? ??????? ???. ?? Commissioners  
?????? ?? ? ?????? ??????????? ??????????? ?? ??????? ?? ??????????????? ?? ?? ??  
?????? ?? ?????? 5, ?????????? 1, ??? VAT Order, ?? ?????? ??????????? ?? ?? ??  
?????? ??????????? ??, ???????, ??? ??????? ?? ?? ?? ?? ?????? ???????.

13 ???????, ??? ??? ?????????????????? ??? ?? ??? ????? ??????????????, ? Scottish Mutual ??????????  
?? ???????, ?????????? ??? ?? ??? ?????? ??????? ??? ?? ??? ?????? ??????? ?? ?????  
???? 4 365 GBP ?? ??.

14 ??????? ?? Commissioners ?????????? ??? ?????? ??? ?????? ??? ?????????????????? ??? ??  
????????? ?? ??? ?? ?????? ??? ?????????? ?? ???????????, ? Abbey National, ? ?????? ??????????  
??? ??? ?????????? ?? ?????????? ?? ??????? ?????? ??? ??, ?????? ?????????? ??????? ???  
VAT and Duties Tribunal, London (????????? ?????????). ? ?????????? ??? ?????????????? ??  
????????? ??? 9?? ??????? 1997. ? Abbey National ?????? ??? ?????? ?????? ??? High Court  
of Justice.

15 ??? ??? ??????????? ???, ?? High Court of Justice ?????????? ?? ??????????? ??  
?????????? ?? ???? ?? ?????????? ?? ??????????? ?? ?????????? ?? ??????????? ?? ??????????:

«1) ?????????????? ??? ????? ?????????? ??? ?????? 17, ??????????? 2, ??? ????? ?????? ??,  
????????? ? ????"? ?????????? (????????? ???) ?????????? ??? ??????????????" ??? ? ??  
????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?? ?????????????????? ?? ??? ??? ?????  
????? ??? ??? ??????????????, ?????? ??? ?????????????? ??? ?????????? ??? ?????? ???  
????????? ? ??????????;

2) ?????????????? "????????????? [...] ??????? ? ?????? ?????? ?????? ??????" ???? ??? ??????  
??? ?????? 5, ?????????? 8, ??? ??? ?????? ??, ??? ? ? ?????? ????, ???? ???  
?????? ?????? ??? ?????? ??? ?????? ???' ?????????? ??? ?????? ????, ?????? ??? ??  
????????????????? ??? ????? ??????? ?????? ? ?????? ??????????, ?????? ? ?????????????? ???  
????, ???' ??? ?????? ??? ?????? 5, ?????????? 8, ??? 17, ?????????? 2, ?? ?????? ??  
????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?? ?? ??????????, ?? ?????, ?????? ???  
????????? ?? ?????? 5, ?????????? 8, ?? ?????? ?? ?????????? ??? ??? ?????? ???? ??? ??  
?????????;

3) ????? ?????????? ??? ? ?????????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ???? ??  
????????? ? ?????? ??????? ??? ?????? 5, ?????????? 8, ??? ? ???? ?????? ?????????????? ?? ?????? ??  
????? ?? ?????? ? ?????? ??? ?????????? ??? ?????? ?????????????? ?? ?????? ?????????????? ?? ?????? ??  
?? ??? ?????? ??? ??????????????;»

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

16 ?? ?? ??? ????? ???? ??????????, ?? ?????? ?????????????? ?? ?????????????? ??? ???????, ?? ???????  
????????????? ??? ?????? ?????????????? ??, ???? ??? ?????? ?????? ?????? ?????? ??? ?????????? ???  
????????? ?? ?????? 5, ??????????? 8, ??? ?????? ???????, ?????? ? ?????????????? ???????, ?????? ?  
????????? ?????? ?????? ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?  
????????????? ?? ??????? ??? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ??  
????????? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ??.

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17 ? *Abbey National* ?????? ???, ???? ?? ?????????? ??????? ? ?????? ?????? ?????? ??????, ?  
????????????? ??????????? ?? ??????? ??? ?????????? ??? ?????????????? ??? ?? ?????? ?? ?????? ??  
?? ??????? ??? ?????? ?????????? ??? ?? ??? ?????????? ?????? ?????????? ?????????? ??? ??  
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18 ???????, ?????????? ??????????? ???, ??? ??? ?????? ??????? ??? ??, ???? ? ?????????????? ??? ??  
??? ?? ? ?????????? ?????????????? ???????, ??? ???, ?? ??? ??? ? ???????????, ??  
?????????? ??? ?????????????? ?????????? ??? ?? ?????????? ?????? ?????????? ?????????????? ??  
?? ?????? ??? ?????????? ???????, ? ?????????? ?????? ???????, ??????? ??? ?????? 5, ?????????? 8,  
??? ?????? ???????, ?? ?????? ?????? ??? ?????????? ?????? ?????????? ??? ?? ??? ?? ???? ?? ?  
????????? ??? ?? ?????????? ?? ??????? ??? ?????? ??? ?????????????? ??? ?? ??? ?????? ???. ?? ????  
????, ?????????? ??? ?????? ?????????? ???????, ??? ??? ?????? ?????????? ??? ?? ??? ?????? ??  
????????????? ??? ?? ??? ??????? ??, ?????????? ?????? ?? ?????? ?? ?????? ?????? ??? ??  
????? ?? ??? ?????????? ?????????? ?????????? ?????????? ??? ?? ??? ?? ?????????? ??? ??  
????????? ?? ?????????? ??????????.

19 ? ?????????? ?????????? ?????????? ???, ???? ??? ?????? ?????? ?????? ??? ?????? ??? ??????? ???  
?? ??? ?????? 5, ?????????? 8, ??? ?????? ???????, «??? ?????????? ???»  
?? ?????????? ??? ?? ?????? ?????? ???????, ?? ?????? ???????????, ?? ??????????  
?? ??????? ??? ?????????? ?????? ?????? ?????? ?????? ??????. ??? ?????? «?????????»  
????????? ??? ?????????? ?????? ?????? ??? ?????, ??? ????? ?????? ?????????? ??? ??,  
?? ??????? ?????????? ?? ?????????? ?? ?????????? ??? ?? ?????? ?????? ?????????? ??????????????  
?? ???????????. ?? ?????????? ?????? ?????? ?????????????? ?????? ?????? ??  
????????????? ?? ?????????? ?????????? ??? ?? ??? ??? ?????? ?????? ?????? ?????????? ??????????  
????????? ?? ?????????? ?????????? ?? ?????????? ?? ??? ?? ??? ?????? ??? ???????, ??? ??????  
????????? ???????. ?? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??  
?? ??? ?????????? ??? ?????? ?????? ?????? prorata ??? ?????? 17, ?????????? 5, ??  
19 ??? ?????? ??????. ??? ?? ?????? ?????? ?????????? ?????????? ??? ?????????? ???  
?????????????, ?????????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?? 5, ??????????  
8, ??? ?????? ??????, ??? ?????? ?????????? ???, ?????? ?? ?????? ??? ?????? ??? ?? ??????  
????????? ??? ?? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ??????  
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20 ? ?????????? ??? ?????????? ?????????? ?????????? ???, ?????? ?? ?????? ?? ??????? ???  
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?? ?????? ??? ?????? ? ???? ??? ?????? ??? ?????? ???, ??? ?????? ?????? ?????? ??????  
????????? ??? ?? ??? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?? ????  
????? ?? ?????????? ??? ?????????? ??? ??, ?????? ? ?????????? ??? ?????? ??? ?? ??????  
???, ??? ??? ?????? ???, ??? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?? ??? ??  
????????? ??? ?? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ??  
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21 ??????????, ? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?? ?????????? ???  
????? ??? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?? ?????? ??? ??

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

22 ? ?????????? ?????????? ?? ?????? ?????????? ?? ?????????? ?? ?? ?????????? ?? ??????????  
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?? ?????? ?????? ?? ?? ?????????????? ?????????? ???????????????. ???????, ??? ?? ?????? 5,  
????????? 8, ??? ?????? ?????? ?????? ?????? ???, ??? ?? ?????????? ?????? ?????? ?? ??????  
????????? ??????, ?????? ?????? ?????? ?????? ?????????????????? ?? ?? ?????????????? ?? ???  
????????? ?????? ???????????. ???????, ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?? ??  
????? ?????????? ?????????? ?????????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ??????????  
??????????????, ?????? ?????? ?????? ??? ?????????????? ???????????????.

23 ??????, ??? ?????? ?? ?????????? ?? ?????? 17, ?????????? 5, ??? ?????? ??????, ?  
????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?????????? ?????? ??? ?? ?? ???  
????????? ?????? ?? ?????????? ?? ?????? ?????? ??? ?????????? ?????? ?????????????? ??  
????? ??????????????, ?????? ?????????? ?????? ?? ?????? ?? ?????? ?? ?????? ??? ?? ?? ??  
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24 ???????????, ?????????? ? ?????????? ?? ?????????? ?? ?? ?????????? ?? ?????????? ?????????? ??  
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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, Gabalfrisa ?.??., ?????? 2000, ?. ?-1577, ????? 44,  
?? ?? 8?? ?????? 2000, C-98/98, Midland Bank, ?????? 2000, ?. ?-4177, ????? 19).

25 ?? ?????? 17, ?????????? 5, ??? ?????? ??????, ??? ?? ??? ?????? ?????? ??  
????????? ? ?????????? 2 ?? ?????? ??????, ?????, ?????? ?? ?????????? ?????? ??  
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?? ?? ?????????? ?? ?????? «?? ? ?? ?????????? ?????????????? ?? ?????? ??  
????????? ?? ?????? ?????? 2 ?? 3, ?? ?????? ?????? ?????? ?????? ?? ?????? ??, ??  
?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? «?? ? ?? ??????????» ?????????? ??, ?? ??  
????????? ?????? ?? ?????? ?????? ?????? ?? ?????? ?????? 2, ?? ?????? ?????? ?? ?? ??  
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?? ??  
?? ?? ?? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?????? ?? (??, ?????? ?? 6?? ?????? 1995, C-4/94, BLP Group, ??????  
1995, ?. ?-983, ?????? 18 ?? 19, ??? ?????????? ?????? ?????? Midland Bank, ????? 20).

26 ????? ??????? ?? ?????????? ??? ?????? 24 ??? ?????????????????? ?????????? Midland Bank,  
?? ?????? 2 ??? ?????? ??????? ??? 17, ?????????? 2, 3 ??? 5, ??? ?????? ??????? ?????? ???  
?????? ???, ???' ?????, ????? ?????????? ? ?????? ?????? ?????? ?????? ?????? ???  
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27 ??????????? ??????? ? ??????? ??, ??????? ?? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ??????  
??? ??????? ?? ?? ?? ??????? ?? ?? ?? ?????? 2 ?? ?????? ??? ?? ?? ?????? ??????, ??  
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???? ??????? ?? ??????? ?? ?? ?????? ?? ?? ??????? ??????? ??????? ?? ?? ??????? ?? ?? ??  
(????????????? ?????? Midland Bank, ??? 29).

29 ??????????, ??????????? ?? ?????????? ?? ??????? ?????? ??? ?????? ?????? ?????? ?????? ???  
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30 ???????, ?? ??? 5, ?????????? 8, ??? ??? ?????? ???????? ?????????? ??? ?? ??? ?????? ???  
?????? ?? ??????? ???, ??? ??? ?????????? ??????? ? ?????? ?????? ??????? ??????, ???  
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?????? ??? ??? ?????? ??????. ??????? ?? ?? ?????? 2 ??? ?????? ???????, ??? ??????  
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????????? ??? ??? ?????? ??? ?????? ??? ?????? 17, ?????????? 2, ??? ?????? ??????.

31 ?????, ???, ??? Abbey National, ?????????? ???, ????? ??? ?????? 5, ?????????? 8, ???  
????? ???????, ? ?????????? ?????????? ??? ????????????, ? ?????????? ?????? ??  
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33 ?????? ?????? ?? ??????????? ?? ??????????? ?? ?????? ? Abbey National ?????? ??? ??  
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???????, ?????????????? ???, ? Scottish Mutual ?? ??????? ?? ??????? ??? ?? ???  
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????????? 2, ??? ?????? ??????. ?? ??????? ?? ?????????? ??? ?? ?????????? ??? ?????? ? ??????  
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?? ?????????? ??? ?????? 5, ?????????? 8, ??? ?????? ?????? ???, ??????, ? ??????, ? ??????????  
?? ?????????? ?????? ???, ??? ?????? ?????? ??? ?? ?????? ?? ?? ? ??????????  
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34 ??? ?? ?????????? ?????????? ??? ?? ?????????? ?????????????? ?????????? ???  
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35 ????, ?? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ???  
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??, ??? ?? ?????????? ??? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ??? ??????????  
?? ?????????? ??? ?? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? (??., ??? ??  
????? ???, ?????????? ?????? ?????? Gabalfrisa ?.??., ??? 45). ???, ?? ??????  
????????? ?????? ??????, ??????, ?? ?????? ??? ?????????? ?????? ??? ?? ?????? ???  
???? ?????????? ??? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
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36 ???????, ?? ?????? ?????? ?????????? ??? ?????????????? ?????????? ??? ?? ??? ??????  
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37 ??????, ??? ?? ??? 17, ?????????? 5, ??? ?????? ?????? ?????? ??? ?  
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38 ?????, ??? ?????? ?? ?????????? ??? ?????? 26 ??? ?????????????? ??????????  
Midland Bank, ? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ?????? ???  
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??? ?????????? ??? ?? ????????????, ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ???????  
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39 ? ??????? ?????? ?????? ?????? ?? ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ??????????  
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40 ????????, ?? ?? ??????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ??  
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?? ?????????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ?????????????? ?' ???? ?? ??????  
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41 ??? ?????? ?????????? ?????????? ?? ?????????? ?? ?? ?????????? ??? ?????? ??????????  
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42 ????????, ??? ?????????? ?????? ??? ?????? ?? ?????? ? ??????? ???, ??? ?? ??????  
????? ??? ?? ?????? ??? ?????????? ??? ?????? ?? ?????? 5, ?????????? 8, ??? ?? ?????  
??????, ??? ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ?? ??????????  
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?? ?????????? ?????????? ?? ?????????????? ??? ?????? ?? ?????????? ?????????? ??? ?? ??????  
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??, ???????, ?????? ???' ???? ??????  
?? ?????? ?????? ?? ?? ?????? ??? ?????????? ?????????????? ??? ?????? ??? ??????????  
????? ????. ???????, ?? ? ?????????? ?????????? ?????????? ??? ?????? ??? ??????????  
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??? ?? ?????? ??? ?????? ??? ?????? ?? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
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43 ?? ??? ?????? ??? ?????? ?????????? ? ?????????? ??? ?????????? ?????????? ??? ? ??????????  
?? ??? ??, ??? ?? ? ???????, ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??  
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????????? ???, ?' ???? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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?????????? ?? ? ? ??????????? ?? ?? ??????? ?? ??????? ?? 2?? ?????????? 1998 ??  
High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court), ????????????:

???? ??? ?????? ?????? ?????? ??? ?????????? ??? ??? ??????? ?? ?????? 5, ???????????  
8, ??? ??? ?????? ??????? 77/388/???, ??? ?? ???????????, ??? 17?? ??\_?? 1977, ??? ???????????  
??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ?????? ?????? ?????? - ???  
?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ???, ?????? ? ??????????  
??? ??????? ? ?????? ?????? ?????? ?????????? ??? ??? ?????????? ?????????? ??????, ?? ??????  
??? ?????? ?????????? ? ?????? ?????? ?????????? ??? ??? ?????????? ??? ?????? ?????? ?????? ??  
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????????????? ?????????????? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ???  
????????? ??? ??? ?????????? ?????? ???, ??? ?? ??? 17, ?????????? 5, ??? ??????  
?????? 77/388 ?????????? ??? ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ??? ??????  
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????????????? ???, ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
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