

ELIZABETH II



1973 CHAPTER v

An Act to provide for the transfer to Mercantile Credit Company Limited of the undertakings of The Astley Industrial Trust Limited, Astley Gaydon Motor Finance Limited, Rootes Acceptances Limited, Transport Acceptances Limited, Mercantile Credit Finance Limited, Astley Acceptances Limited, Kingsway and General Property Trust Limited and Mercantile Credit (Factors) Limited; and for other purposes incidental thereto and consequential thereon.

[3rd May 1973]

WHEREAS—

(1) Mercantile Credit Company Limited (hereinafter called “Mercantile”), The Astley Industrial Trust Limited (hereinafter called “Astley Industrial Trust”), Astley Gaydon Motor Finance Limited (hereinafter called “Astley Gaydon”), Rootes Acceptances Limited (hereinafter called “Rootes Acceptances”), and Transport Acceptances Limited (hereinafter called “Transport Acceptances”), carry on in the United Kingdom the businesses of letting goods under hire-purchase agreements, and of providing instalment credit and other facilities:

(2) Mercantile Credit Finance Limited (hereinafter called "Mercantile Finance") and Astley Acceptances Limited (hereinafter called "Astley Acceptances") both carry on in the United Kingdom the business of banking:

(3) Kingsway and General Property Trust Limited (hereinafter called "Kingsway") carries on in the United Kingdom the business of providing stocking loans and other facilities:

(4) Mercantile Credit (Factors) Limited (hereinafter called "Mercantile Factors") carries on in the United Kingdom the business of factoring debts:

(5) Each of the said companies is a company within the meaning of the Companies Acts 1948 to 1967 and is a company limited by shares:

(6) Astley Industrial Trust, Astley Gaydon, Rootes Acceptances, Transport Acceptances, Mercantile Finance, Astley Acceptances, Kingsway and Mercantile Factors are each wholly owned subsidiaries of Mercantile:

(7) For the better conduct of the businesses of Mercantile, Astley Industrial Trust, Astley Gaydon, Rootes Acceptances, Transport Acceptances, Mercantile Finance, Astley Acceptances, Kingsway and Mercantile Factors it is expedient that their respective undertakings should be merged and that the merger should occur by means of transfers of the undertakings of the last eight mentioned companies to Mercantile:

(8) It is expedient that the aforesaid transfers should be effected economically and without interference with the conduct and continuity of the various businesses referred to herein:

(9) It is further expedient that the said transfers should be effected as provided in this Act and that the other provisions contained in this Act relative thereto and consequential thereon should be enacted:

(10) The purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Mercantile Credit Act 1973.

2.—(1) In this Act, unless the subject or context otherwise Interpretation. requires—

“ the appointed day ” means such day as may be appointed under section 3 (Appointed day) of this Act;

“ customer ” includes any person having a banking account or any dealing, transaction or arrangement in the course of business with a transferring company;

“ enactment ” means any enactment in this Act or in any general or local Act or in any order, rule or regulation made under any Act;

“ liabilities ” includes duties and obligations of every description whether actual or contingent, present or future;

“ Mercantile ” means Mercantile Credit Company Limited;

“ property ” means property of every description wheresoever situate and includes property held on trust and securities, rights and powers of every description but does not include any document required to be kept pursuant to the provisions of the Companies Acts 1948 to 1967;

“ security ” means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, hypothecation, undertaking, indemnity, guarantee, lien, pledge or other document or arrangement for securing the payment of a debt whether present or future or the discharge of a liability;

“ the transferring companies ” means The Astley Industrial Trust Limited, Astley Gaydon Motor Finance Limited, Rootes Acceptances Limited, Transport Acceptances Limited, Mercantile Credit Finance Limited, Astley Acceptances Limited, Kingsway and General Property Trust Limited and Mercantile Credit (Factors) Limited and “ transferring Company ” shall be construed accordingly;

“ undertaking ” when used in regard to a company means the business of and all existing property, rights, liabilities and obligations of that company of whatsoever nature, and whether or not assignable at law or in equity, and wheresoever situate.

(2) Any reference in this Act to any enactment shall be construed as a reference to that enactment as applied, extended or amended by or by virtue of any subsequent enactment including any enactment in this Act.

3.—(1) The Secretary of State may by order appoint a day for Appointed the purposes of this Act. day.

(2) The power conferred by the last subsection shall be exercisable by statutory instrument.

Transfer of undertakings.

4.—(1) On the appointed day the undertakings of the transferring companies shall by virtue of this Act be transferred to and vest in Mercantile.

1963 c. 18.

(2) The production of a Queen's Printer's copy of this Act shall on and after the appointed day be conclusive evidence in all courts and proceedings of the transfer of the undertakings of the transferring companies to Mercantile and of their vesting in Mercantile; and without prejudice to the generality of the foregoing any such copy of this Act shall, in relation to any registered securities within the meaning of the Stock Transfer Act 1963 which are transferred and vested by virtue of this Act, operate for all the purposes of the said Act of 1963 as a duly executed stock transfer in respect of the transfer and vesting of such securities.

Saving of contracts, etc.

5. Subject to the provisions of this Act all contracts, agreements, conveyances, deeds, leases, licences, guarantees, bonds, indemnities, instructions and other instruments or undertakings entered into by or made with or addressed to a transferring company, whether alone or with any other person and whether as principal or agent, in force on the appointed day shall on and from that day be binding and of full force and effect in every respect against or in favour of Mercantile as fully and effectually as if, instead of a transferring company, Mercantile had been a party thereto or bound thereby or entitled to the benefit thereof:

Provided that no director, secretary or auditor of a transferring company shall by virtue only of this Act become a director, secretary or auditor (as the case may be) of Mercantile.

Application of enactments and documents.

6.—(1) Subject to the provisions of this Act, where—
 (a) any enactment other than an enactment in this Act; or
 (b) any document whensoever made or executed;
 contains any reference express or implied to a transferring company such reference shall, on and from the appointed day and except where the context otherwise requires, be read, construed and have effect as a reference to Mercantile.

(2) Nothing in this Act shall exempt Mercantile from the provisions of any enactment relating to hire-purchase, credit sale, conditional sale and hiring agreements or to companies carrying on the business of banking.

Supplementary provisions as to businesses.

7. Without prejudice to the generality of the foregoing provisions of this Act, the following provisions shall have effect with relation to the businesses of the transferring companies:—

(a) Any account between a transferring company and a customer at any office or branch of that transferring

company shall be transferred to Mercantile on the appointed day and shall become on and from that day an account between Mercantile and such customer with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if such account between the transferring company and the customer had continued and such account shall be deemed for all purposes to be a single continuing account and so that any instruction, order, direction, mandate, power of attorney, authority or undertaking given by such customer in relation to such account and subsisting at or given after the appointed day shall, unless and until revoked or cancelled apply and have effect in relation to such account after its transfer to Mercantile as aforesaid:

- (b) Any security in favour of a transferring company, an agent for a transferring company or a nominee of a transferring company for the payment of debts or liabilities (whether present or future, actual or contingent) of any person shall be transferred or deemed to be transferred to Mercantile on the appointed day and shall be held by and be available to Mercantile as security for the payment of such debts and liabilities to Mercantile; and where the security extends to future advances or to future liabilities of such person, the said security shall on and from that day be held by and be available to Mercantile as security for future advances to the said person by, and future liabilities of the said person to, Mercantile to the same extent to which future advances by, or liabilities to, the transferring company were secured thereby immediately before that day:
- (c) Mercantile shall, in relation to any security transferred or deemed to have been transferred to it in accordance with or by virtue of the provisions of this Act and the monies thereby secured in accordance with those provisions, be entitled to the same rights and priorities and subject to the same obligations and incidents as the transferring company from which the same has been transferred or deemed to have been transferred would have been entitled and subject to if the same had continued to be held by the said transferring company:
- (d) The custody of any document, goods or other property held by a transferring company as bailee for any other person at any office or branch of such transferring company shall be transferred or deemed to be transferred to Mercantile on the appointed day and the rights and obligations of such transferring company under any

contract of bailment relating to such document, goods or property shall be transferred or deemed to be transferred on that day to Mercantile:

- (e) 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 a transferring company, or payable at any place of business of a transferring company shall have the same effect on and from the appointed day as if it had been drawn on, or given to, or accepted or endorsed by Mercantile, or payable at the same place of business of Mercantile.

Actions, etc.,
not to abate.

8.—(1) Subject to the provisions of this Act, any action, application, arbitration or proceeding and any cause of action, application, arbitration or proceeding which shall on the appointed day be pending or existing by, against or in favour of a transferring company shall not abate or be discontinued or be in any way prejudicially affected by reason of the provisions of this Act, but the same may only be prosecuted, continued and enforced by, against or in favour of Mercantile as and when it might have been prosecuted, continued and enforced by, against or in favour of a transferring company if this Act had not been passed.

(2) Subject to the provisions of this Act any judgment or award obtained by or against a transferring company and not fully satisfied before the appointed day shall only be enforceable by or against Mercantile.

(3) Nothing in this Act shall terminate or prejudicially affect the appointment of any receiver or of any receiver and manager.

Evidence,
books and
documents.

9.—(1) On and from the appointed day all admissions, books and other documents which would before the appointed day have been evidence in respect of any matter for or against a transferring company shall be admitted in evidence in respect of the same matter for or against Mercantile.

1968 c. 64.

(2) In this section "document" has the same meaning as in section 10 of the Civil Evidence Act 1968.

Application
of Bankers'
Books
Evidence Act
1879.

1879 c. 11.

10.—(1) On and from the appointed day the Bankers' Books Evidence Act 1879 shall apply to any books to which that Act was applicable before that day and which are transferred to Mercantile by virtue of this Act, as if such books were the books of Mercantile.

(2) For the purposes of section 4 of the said Act of 1879, any such books so transferred to Mercantile shall be deemed to have been the ordinary books of Mercantile at the time of the making of any entry therein which purports to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

(3) In this section "books" has the same meaning as in the Bankers' Books Evidence Act 1879.

11. The transfer of an interest in land by virtue of this Act shall not— Transfers of interests in land.

- (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; or
- (c) operate so as to merge any leasehold interest in the reversion which is expectant thereon.

12.—(1) A transferring company shall by virtue of this Act be dissolved on the day (being a day after the appointed day) on which at the request of Mercantile, the registrar or other officer performing under the Companies Act 1948 the duty of registration of companies in England strikes that transferring company off the register. Dissolution of transferring companies. 1948 c. 38.

(2) Notwithstanding the provisions of section 354 of the Companies Act 1948 (which relates to the property of a dissolved company), on the day referred to in the preceding subsection all documents required to be kept by the transferring company pursuant to the provisions of the Companies Acts 1948 to 1967 shall by virtue of this Act be transferred to and vest in Mercantile.

13.—(1) It is hereby declared that this Act extends to Northern Ireland. Application to Northern Ireland.

(2) In the application of this Act to Northern Ireland—

- (a) the provisions thereof shall be treated for the purposes of section 6 of the Government of Ireland Act 1920 (which provides that the Parliament of Northern Ireland may not repeal or alter Acts of Parliament of the United Kingdom passed after the day appointed for the purposes of that section) as passed before that day; and 1920 c. 67.
- (b) (i) the expression "Act" shall include an Act of the Parliament of Northern Ireland;
- (ii) in section 11 (Transfers of interests in land) there shall be added at the end "or (d) constitute a purchase or creation of that interest for the purpose of section 10 (3) of the Business Tenancies Act (Northern Ireland) 1964"; and 1964 c. 36 (N.I.).
- (iii) in section 4 (2) (Transfer of undertakings) for the reference to the Stock Transfer Act 1963 there shall be substituted a reference to the Stock Transfer Act (Northern Ireland) 1963. 1963 c. 18. 1963 c. 24 (N.I.).

Application
to Scotland.

14. This Act shall extend to Scotland and in the application thereof to Scotland the following provisions shall have effect:—

- (a) In the construction of this Act the expression “ mortgage ” includes a floating charge or any instrument containing a floating charge, a standard security, an assignation or disposition ex-facie absolute and any agreement qualifying the same, a bond and disposition or assignation in security, a cash credit bond and disposition or assignation in security, an assignation in security and any real right or burden of whatever kind in the nature of a security;
- (b) All standard securities, cash credit bonds and dispositions or assignations in security expressed to be in favour of a transferring company transferred to, and vested in, Mercantile on the appointed day by virtue of this Act shall, on and after that day, have the same effect in favour of Mercantile up to the maximum amounts stated therein respectively in all respects as if they had been originally granted in favour of Mercantile for such maximum amount;
- (c) To enable Mercantile to complete a title, if thought fit, to any property transferred and vested by virtue of this Act by notice of title or otherwise, or to deduce title, this Act shall be deemed to be and may be used as a general disposition, conveyance or assignation, as the case may be, of such property in favour of Mercantile; and
- (d) In section 9 (Evidence, books and documents) for the reference to section 10 of the Civil Evidence Act 1968 there shall be substituted a reference to section 17 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.

1968 c. 64.

1968 c. 70.

Costs of
Act.

15. All costs, charges and expenses preliminary to and of and incidental to the preparing, applying for, obtaining and passing of this Act or otherwise in relation thereto shall be paid by Mercantile.

PRINTED IN ENGLAND BY OYEZ PRESS LTD.

FOR C. H. BAYLIS, C.B.

Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

10½p net

SBN 10 510573 2



Mercantile Credit Act 1973

CHAPTER V

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Appointed day.
4. Transfer of undertakings.
5. Saving of contracts, etc.
6. Application of enactments and documents.
7. Supplementary provisions as to businesses.
8. Actions, etc., not to abate.
9. Evidence, books and documents.
10. Application of Bankers' Books Evidence Act 1879.
11. Transfers of interests in land.
12. Dissolution of transferring companies.
13. Application to Northern Ireland.
14. Application to Scotland.
15. Costs of Act.