

ELIZABETH II



1973 CHAPTER viii

An Act to provide for the transfer to Forward Trust Limited of the undertaking of Forward Trust (Finance) Limited; and for other purposes incidental thereto and consequential thereon. [23rd May 1973]

WHEREAS Forward Trust (Finance) Limited (hereinafter referred to as "FTF") carries on in the United Kingdom and elsewhere the business of banking:

And whereas FTF is a wholly-owned subsidiary of Forward Trust Limited (hereinafter referred to as "the Company") and the Company is a wholly-owned subsidiary of Midland Bank Limited:

And whereas the Company and FTF are companies within the meaning of the Companies Acts, 1948 to 1967, and are limited by shares:

And whereas for the better conduct of the business of the Company and FTF it is expedient that their respective undertakings should be merged and that the merger should occur by means of the transfer to the Company of the undertaking of FTF:

And whereas it is expedient that the said transfer should be effected economically and without interference with the conduct and continuity of the businesses of the Company and FTF:

And whereas it is expedient that the said transfer 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:

And whereas 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 Forward Trust Act 1973.

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

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

“ the Company ” means Forward Trust Limited;

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

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

“ FTF ” means Forward Trust (Finance) Limited;

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

“ property ” means property and assets of every description wheresoever situate and includes securities, rights, benefits 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 (whether actual or constructive) or other document or arrangement for securing the payment of a debt, whether present or future, or the discharge of a liability;

“the undertaking” means the business and all of the property vested in or belonging to or held by FTF immediately before the appointed day and all of the liabilities to which FTF shall be subject immediately before that day.

(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 day.**
the purposes of this Act.

(2) The power conferred by subsection (1) of this section shall be exercisable by statutory instrument.

4.—(1) On the appointed day the undertaking shall by virtue **Transfer of undertaking.**
of this Act be transferred to and vest in the Company.

(2) If any portion of the undertaking cannot be transferred and vested in accordance with this Act because transfers of that portion are governed otherwise than by the law of a part of the United Kingdom, then FTF shall so soon as is practicable after the appointed day take all necessary steps for the purpose of securing that the portion is effectively transferred to and vested in the Company and pending such transfer shall hold the same in trust for the Company.

5. Subject to the provisions of this Act, all contracts, agree- **Saving of contracts, etc.**
ments, conveyances, deeds, leases, licences, guarantees, bonds, indemnities, instructions and other instruments or undertakings entered into by or made with or addressed to FTF (whether alone or with any other person and whether as principal or agent) before and in force on the appointed day shall on and after that day to the extent that they were previously binding and enforceable against or in favour of FTF, be binding and of full force and effect in every respect against or in favour of the Company as fully and effectually as if, instead of FTF, the Company had been a party thereto or bound thereby or entitled to the benefit thereof:

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

Application of enactments and documents.

6. 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 FTF, such reference shall, on and after the appointed day and except where the context otherwise requires, be read, construed and have effect as a reference to the Company.

Supplementary provisions as to business.

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

- (a) Any account between FTF and a customer at any office or branch of FTF shall be transferred to the Company on the appointed day and shall become on and after that day an account between the Company 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 FTF 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, undertaking or consent (whether in writing or not) 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 the Company as aforesaid:
- (b) Any security in favour of FTF, an agent for FTF or a nominee of FTF 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 the Company on the appointed day and shall be held by and be available to the Company as security for the payment of such debts and liabilities to the Company; and where the security extends to future advances or to future liabilities of such person, the said security shall on and after that day be held by and be available to the Company as security for future advances to the said person by, and future liabilities of the said person to, the Company to the same extent to which future advances by, or liabilities to, FTF were secured thereby immediately before that day:

- (c) The Company 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 moneys thereby secured in accordance with those provisions, be entitled to the same rights and priorities and subject to the same obligations and incidents as FTF would have been entitled and subject to if the same had continued to be held by FTF:
- (d) The custody of any document, goods or other property held by FTF as bailee for any other person at any office or branch of FTF shall be transferred or deemed to be transferred to the Company on the appointed day and the rights and obligations of FTF under any contract of bailment relating to such document, goods or property shall be transferred or deemed to be transferred on that day to the Company:
- (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, FTF, or payable at any place of business of FTF shall have the same effect on and after the appointed day as if it had been drawn on, or given to, or accepted or endorsed by, the Company, or payable at the same place of business of the Company.

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 FTF 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 the Company as and when it might have been prosecuted, continued and enforced by, against or in favour of FTF if this Act had not been passed. Actions, etc.,
not to abate.

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

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

9.—(1) Subject to the provisions of this Act, on and after the appointed day all admissions, books and other documents which would before the appointed day have been admissible in evidence Evidence and
books and
documents.

in respect of any matter for or against FTF shall be admissible in evidence in respect of the same matter for or against the Company.

1968 c. 64. (2) In this section "documents" 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 after 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 the Company by virtue of this Act, as if such books were the books of the Company.

(2) For the purposes of section 4 of the said Act of 1879, any such books so transferred to the Company shall be deemed to have been the ordinary books of the Company 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) For the purposes of this section, "books" include ledgers, day books, cash books, account books and all other books and records (including computer tape) used in the ordinary business of FTF before the appointed day.

Evidence of
transfer.

1963 c. 18.

11. 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 undertaking to the Company and of its vesting in the Company; 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.

Transfers of
interests in
land.

1954 c. 56.

12. For the avoidance of doubt it is hereby declared that the transfer of an interest in land under and by virtue of this Act shall not—

(a) constitute a purchase or creation of that interest for the purposes of section 30 (2) of the Landlord and Tenant Act, 1954; or

(b) 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

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

13. Nothing in this Act shall exempt the Company from the provisions of any enactment relating to companies carrying on the business of banking.

No exemption from enactments concerning banking companies.

14.—(1) FTF shall by virtue of this Act be dissolved on the day (being a day after the appointed day) on which at the request of the Company the registrar or other officer performing under the Companies Act, 1948, the duty of registration of companies in England strikes FTF off the register.

Dissolution of FTF.

1948 c. 38.

(2) Notwithstanding the provisions of section 354 of the Companies Act, 1948, on the day referred to in the preceding subsection, all documents required to be kept by FTF pursuant to the provisions of the Companies Acts, 1948 to 1967, shall by virtue of this Act be transferred to and vest in the Company.

15.—(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, as passed before the appointed day within the meaning of that section; and

1920 c. 67.

(b) (i) the expression “ Act ” shall include an Act of the Parliament of Northern Ireland;

(ii) in section 9 (2) for the reference to section 10 of the Civil Evidence Act, 1968, there shall be substituted a reference to section 6 of the Civil Evidence Act (Northern Ireland), 1971;

1968 c. 64.

1971 c. 36 (N.I.).

(iii) in section 11 for the reference to the Stock Transfer Act, 1963, there shall be substituted a reference to the Stock Transfer Act (Northern Ireland), 1963; and

1963 c. 18.

1963 c. 24 (N.I.).

(iv) in section 12 for the reference to section 30 (2) of the Landlord and Tenant Act, 1954, there shall be substituted a reference to section 10 (3) of the Business Tenancies Act (Northern Ireland), 1964.

1954 c. 56.

1964 c. 36 (N.I.).

Application
to Scotland.

16. 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—

1968 c. 64.

for the reference in section 9 (2) 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. 70.

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 floating charges, standard securities, cash credit bonds, bonds and dispositions or assignations in security, assignations and dispositions ex facie absolute expressed to be in favour of FTF transferred to and vested in the Company on the appointed day by virtue of this Act shall, on and after that day, have the same effect in favour of the Company up to the maximum amounts stated therein respectively in all respects as if they had been originally granted in favour of the Company for such maximum amount:

(c) To enable the Company 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 the Company.

Costs of Act.

17. 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 the Company.

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CHAPTER viii

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