ELIZABETH II



1981 CHAPTER vii

An Act to provide for the transfer to Charterhouse Japhet Limited of the undertaking of Keyser Ullmann Limited; and for other purposes. [15th April 1981]

WHEREAS—

(1) Charterhouse Japhet Limited (hereinafter referred to as "Japhet") is a company incorporated under the Companies Acts 1908 to 1917 as a company limited by shares, and Keyser Ullmann Limited (hereinafter referred to as "Keyser") is a company incorporated under the Companies Act 1948 as a company limited by shares: 1948 c. 38.

(2) Both Japhet and Keyser are recognised banks for the purposes of the Banking Act 1979 and carry on, in the United Kingdom and elsewhere, the business of banking: 1979 c. 37.

(3) Keyser is a wholly-owned subsidiary of Japhet:

(4) For the better conduct of the businesses carried on by Japhet and Keyser it is expedient that provision be made for the fusion of their undertakings by the transfer to Japhet of the

undertaking of Keyser as provided in this Act and that the transfer should be effected without interference with the conduct and continuity of those businesses:

(5) It is expedient that the other provisions in this Act should be enacted:

(6) The objects of this Act cannot be attained 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 Charterhouse Japhet Act 1981.

Interpretation.

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

"the appointed day" means 1st June 1981, or such earlier day as may be appointed under subsection (2) of this section;

"customer" includes any person having a banking account or other dealing, transaction or arrangement in the course of business with Japhet or, as the case may be, Keyser;

"existing" means existing or in force immediately before the appointed day;

"Japhet" means Charterhouse Japhet Limited as existing;

"Keyser" means Keyser Ullmann Limited as existing;

"property" means property and assets of every description wheresoever situate, and includes securities, rights, benefits and powers of every description but does not include the directors' minute books and any books and documents relating exclusively to the shareholders and the constitution of Keyser;

"security" includes a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability or obligation (whether present or future, actual or contingent);

"will" includes a codicil and any other testamentary writing.

(2) (*a*) The directors of Japhet may appoint a day earlier than 1st June 1981 to be the appointed day for the purposes of this Act.

(*b*) If an earlier day is appointed under this subsection Japhet shall, not less than five days before that day, publish in the London Gazette a notice stating the day so appointed.

Transfer of Keyser's undertaking to Japhet.

3.—(1) On the appointed day all existing property, liabilities and obligations of Keyser of whatsoever nature, and whether or not assignable at law or in equity, and wheresoever situate, and whether Keyser holds or is subject to the same beneficially or in any fiduciary capacity, shall, by virtue of this Act and without further assurance, be transferred to, and vest in, Japhet to the intent that Japhet shall succeed to the whole undertaking of Keyser and to the right to use the name " Keyser Ullmann ".

(2) Where the transfer or vesting of any property referred to in subsection (1) above is governed otherwise than by the law of any part of the United Kingdom, Keyser shall, if Japhet so requires, so soon as is practicable after the appointed day, take all necessary steps for securing the effective transfer or vesting of the property to or in Japhet and, pending such transfer or vesting, Keyser shall hold any such property in trust for Japhet.

Provisions as to trust property transferred and wills.

4.—(1) Any property transferred to, and vested in, Japhet by virtue of this Act which immediately before the appointed day was held by Keyser, whether alone or jointly with any other person, as trustee or custodian trustee of any trust deed, settlement, covenant, agreement or will (whether originally so appointed or not, and whether appointed under hand or seal, or by order of any court), as judicial trustee appointed by order of any court or in any other fiduciary capacity whatsoever, shall, on and from the appointed day, be held by Japhet, whether alone or jointly with such other person, in the same capacity upon the trusts, and with and subject to the powers, provisions, liabilities and obligations, applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any property became vested in Keyser in any such fiduciary capacity, and any provision therein or any existing contract or arrangement for the payment to, or retention by, Keyser of remuneration for its services in any such fiduciary capacity, shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to Keyser, other than a reference (however worded and whether express or implied) to terms and conditions of Keyser or to a scale of fees of Keyser, there were substituted a reference to Japhet.

(3) No testamentary gift shall be adeemed by reason only of the operation of any provision of this Act.

Supplementary provisions as to transfer.

5. Without prejudice to the generality of the foregoing provisions of this Act but subject to any provision thereof to the contrary effect—

(1) Every existing contract to which Keyser was a party (whether in writing or not) shall have effect on and from the appointed day as if—

(*a*) Japhet had been a party thereto instead of Keyser;

(*b*) for any reference (however worded and whether express or implied) to Keyser there were substituted, as respects anything falling to be done on or after the appointed day, a reference to Japhet; and

(*c*) any reference (however worded and whether express or implied) to the directors or to any director, officer, clerk or servant of Keyser were, as respects anything falling to be done on or after the appointed day, a reference to the directors of Japhet or, as the case may require, to such director, officer, clerk or servant of Japhet as Japhet may appoint for that purpose or, in default of appointment, to the director, officer, clerk or servant of Japhet who corresponds as nearly as may be to the first-mentioned director, officer, clerk or servant;

(2) Sub-paragraphs (*b*) and (*c*) of paragraph (1) above shall apply to any statutory provision, to any provision of any existing contract to which Keyser was not a party and to any provision of any other existing document (not being a contract or a will) as they apply in relation to a contract to which paragraph (1) above applies:

(3) Any account between Keyser and a customer shall, on and from the appointed day, become an account between Japhet and the customer subject to the same conditions and incidents as theretofore; and such account shall be deemed for all purposes to be a single continuing account:

Provided that nothing herein shall affect any right of Japhet or of the customer to vary the conditions or incidents subject to which any account is kept:

(4) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to Keyser (whether in writing or not and whether or not in relation to an account) shall have effect on and from the appointed day as if given to Japhet:

(5) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, Keyser, or payable at any place of business of Keyser, whether so drawn, given, accepted or endorsed before, on or after the appointed day, 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, Japhet, or were payable at the same place of business of Japhet:

(6) The custody of any document, goods or other thing held by Keyser as bailee at any branch or office of Keyser within the United Kingdom shall pass to Japhet on the appointed day, and the rights and obligations of Keyser under any contract of bailment relating to any such document, goods or thing shall be transferred on that day to Japhet:

(7) Any security held immediately before the appointed day by Keyser, or by a nominee of, or trustee for, Keyser, as security for the payment or discharge of any debt or liability or obligation (whether present or future, actual or contingent) shall, on and from the appointed day, be held by or, as the case may require, by that nominee or trustee for, Japhet, and to the extent of that debt, liability or obligation be available to Japhet, as security for the payment or discharge of such debt or liability or obligation; and any such security which extends to future advances or liabilities shall, on and from the appointed day, be held by, and be available as aforesaid to, Japhet as security for future advances by, and future liabilities to, Japhet in the same manner in all respects as future advances by, or liabilities to, Keyser were secured thereby immediately before that day:

(8) Where by virtue of this Act any right, liability or obligation becomes a right, liability or obligation of Japhet, Japhet and all other persons shall, on and from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that right, liability or obligation as if it had at all times been a right, liability or obligation of Japhet; and any legal proceedings or applications to any authority pending immediately before the appointed day by or against Keyser may be continued by or against Japhet:

(9) Any judgment or award obtained by or against Keyser and not fully satisfied before the appointed day shall be enforceable by or against Japhet in place of Keyser.

Contracts of employment.

6.—(1) Paragraph (1) of section 5 (Supplementary provisions as to transfer) of this Act applies to a contract for the employment of any person by Keyser and employment with Keyser and Japhet under any such contract shall be deemed for all purposes to be a single continuing employment.

(2) No director, secretary or auditor of Keyser shall by virtue only of this Act become a director, secretary or, as the case may be, auditor of Japhet.

Pensions.

7.—(1) The trust deeds and rules constituting or relating to the Keyser Ullmann Group Pension Fund shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to Keyser there were substituted a reference to Japhet.

(2) No officer, clerk or servant of Keyser who, by virtue of this Act, becomes an officer, clerk or servant of Japhet shall be entitled as of right to participate in the Charterhouse Group Security Benefits Scheme.

Evidence and books and documents.

8.—(1) All books and other documents which would before the appointed day have been evidence in respect of any matter for or against Keyser shall be admissible in evidence in respect of the same matter for or against Japhet.

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

1968 c. 64.

Application of Bankers' Books Evidence Act 1879.

1879 c. 11.

9.—(1) On and from the appointed day the Bankers' Books Evidence Act 1879 shall apply to the books of Keyser transferred to Japhet by virtue of this Act, and to entries made therein before the appointed day, as if such books were the books of Japhet.

(2) For the purposes of section 4 of the said Act of 1879, books so transferred to Japhet shall be deemed to have been the ordinary books of Japhet 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 said Act of 1879.

Evidence of transfer.

10.—(1) The production of a Queen's Printer's copy of this Act shall, for all purposes, be conclusive evidence of the transfer of the property, liabilities and obligations of Keyser to Japhet and of the vesting thereof in Japhet in accordance with the provisions of this Act.

(2) Without prejudice to the generality of the foregoing—

(*a*) any such copy of this Act shall, in relation to any registered securities within the meaning of the Stock Transfer Act 1963 transferred to, and vested in, Japhet 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 of such securities from Keyser to Japhet; 1963 c. 18.

(*b*) any document made or executed on or after the appointed day whereby Japhet, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by Keyser immediately before the appointed day, whether alone or jointly with any other person, shall be sufficient evidence that the interest of Keyser in such property became vested in Japhet by virtue of this Act.

(3) Nothing in this section applies to any property falling within subsection (2) of section 3 (Transfer of Keyser's undertaking to Japhet) of this Act.

(4) In this section " convey " has the same meaning as in the Law of Property Act 1925. 1925 c. 20.

Transfers of interests in land.

11. The transfer or vesting of an interest in land 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; 1954 c. 56.

(*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;

(*c*) give rise to any forfeiture;

(*d*) invalidate or discharge any contract or security; or

(*e*) operate so as to merge any leasehold interest in the reversion expectant on it.

Saving for Japhet.

12. Nothing in this Act shall derogate from or prejudice the powers of Japhet to alter its memorandum and articles of association or to dispose of, or deal with, its assets or to carry on or discontinue its business or any part thereof.

Saving for enactments concerning banking institutions.

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

Dissolution of Keyser.

14.—(1) At any time after the appointed day the Registrar of Companies may, at the request of Japhet, strike Keyser off the register and thereupon Keyser shall be dissolved.

1948 c. 38.

(2) Notwithstanding section 354 of the Companies Act 1948 (property of dissolved company), on the day on which Keyser is struck off the register under subsection (1) above the directors' minute books and any books and documents which relate exclusively to the shareholders and the constitution of Keyser shall, by virtue of this Act, be transferred to and vest in Japhet.

Application to Scotland and Northern Ireland.

15.—(1) This Act shall extend to Scotland and Northern Ireland.

(2) In the application of this Act to Scotland the following provisions shall have effect:—

(*a*) In the construction of this Act—

"bailee" includes a custodian and "contract of bailment" includes any other contract regulating custody of things;

"debenture" includes a floating charge or any instrument containing a floating charge;

"judicial trustee" includes a judicial factor;

"mortgage" includes 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; and

"will" includes a trust disposition and settlement and any deed taking effect on the death of any person whereby any part of his estate is disposed of, or under which a succession thereto arises:

(*b*) All standard securities, cash credit bonds and dispositions or assignations in security expressed to be in favour of Keyser vested in Japhet by virtue of this Act shall, on and

from the appointed day, have the same effect in favour of Japhet up to such maximum amounts as may be stated therein respectively in all respects as if they had been originally granted in favour of Japhet for such maximum amounts:

(*c*) To enable Japhet to complete a title, if thought fit, to any property transferred to and vested in it 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, as the case may be, assignation of such property in favour of Japhet:

(*d*) For the reference in section 8 (Evidence and books and documents) of this Act to section 10 of the Civil Evidence Act 1968 there shall be substituted reference to section 17 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968. 1968 c. 64. 1968 c. 70.

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

(*a*) for the reference in section 8 (Evidence and books and documents) of this Act to section 10 of the Civil Evidence Act 1968 there shall be substituted reference to section 6 of the Civil Evidence Act (Northern Ireland) 1971: 1971 c. 36 (N.I.).

(*b*) for the reference in subsection (2) (*a*) of section 10 (Evidence of transfer) of this Act to the Stock Transfer Act 1963 there shall be substituted reference to the Stock Transfer Act (Northern Ireland) 1963 and for the reference in subsection (4) of that section to the Law of Property Act 1925 there shall be substituted reference to the Conveyancing Act 1881: 1963 c. 18. 1963 c. 24 (N.I.). 1925 c. 20. 1881 c. 41.

(*c*) for paragraph (*a*) of section 11 (Transfers of interests in land) of this Act, there shall be substituted the following:—

"(*a*) constitute a purchase or creation of an estate for the purposes of section 10 (3) of the Business Tenancies Act (Northern Ireland) 1964;". 1964 c. 36 (N.I.).

16. The costs, charges and expenses preliminary to, and of and incidental to, the preparing for, obtaining and passing of this Act, or otherwise in relation thereto, shall be paid by Japhet. Costs of Act.

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Charterhouse Japhet Act 1981

CHAPTER vii

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