

GENERAL FINANCE LIMITED BILL

[PRIVATE]

EXPLANATORY NOTE

THIS Bill enables General Finance Limited to assume the undertakings of certain of its subsidiary companies. The principal features of the Bill are as follows:

- (a) The vesting of the undertakings of certain subsidiary companies in General Finance Limited on 1 April 1988 and the winding up of the subsidiary companies;
- (b) The transfer of associated rights and liabilities to General Finance Limited so that priorities of securities are not affected and relationships with clients and others are not prejudiced in any way by the change. Rights of action and other claims against subsidiaries may be pursued against General Finance Limited which has all the rights and obligations of the subsidiaries.

Clause 1 relates to the Short Title.

Clause 2 defines various terms used in the Bill.

Clause 3 provides that the Bill will bind the Crown and other persons.

Clause 4 provides for the vesting of the undertakings of the subsidiary companies in General Finance Limited.

Clauses 5 and 6 relate to matters consequential to the transfer of the undertakings of the subsidiary companies. The provisions are similar to section 6 of the Development Finance Corporation of New Zealand Act 1986.

Clause 7 relates to charges over the property of subsidiary companies and prohibits any subsidiary company from creating or permitting to remain registered any charge over its property.

If there should be any charge registered over the property of a subsidiary company, General Finance Limited is required to ensure that it is released. Until it is released the property of the subsidiary company remains subject to the charge even though the property has been vested in General Finance.

Clauses 8 and 9 relate to matters of evidence and registers. Similar provision is made in sections 10 and 11 of the Development Finance Corporation of New Zealand Act 1986 and a number of recent private Acts.

No. 7—1

Price
incl. GST \$1.90

Clause 10, in relation to taxation, deems the subsidiary companies and General Finance Limited to be the same person, and deems transactions of the subsidiary companies to be transactions of General Finance Limited. There is a similar provision in section 17 of the Development Finance Corporation of New Zealand Act 1986.

Clause 11 deems the subsidiary companies to be dissolved with effect from the commencement of 1 April 1988 with the same effect as if they had been voluntarily wound up under the Companies Act 1955.

Special provision is made in relation to the definition of "group" for the purposes of the Securities Regulations 1983.

Clause 12 provides that the Bill will be a private Act.

Hon. Peter Neilson

GENERAL FINANCE LIMITED

[PRIVATE]

ANALYSIS

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A BILL INTITULED

An Act to provide for the transfer to General Finance Limited of the whole of the undertaking of certain subsidiaries of that company, and the dissolution of those subsidiaries

WHEREAS

- A. General Finance Limited is a company incorporated under the Companies Act 1955, having its registered office at 120-124 Featherston Street, Wellington, and carrying on business as a finance company:
- B. The companies specified in the Schedule to this Act (“the subsidiary companies”) are all wholly owned subsidiaries of General Finance Limited:
- C. It is considered desirable that General Finance Limited assume the undertakings and operations of the subsidiary companies by the transfer to it of all property, rights, and liabilities of the subsidiary companies and that the subsidiary companies be dissolved:
- D. Legislation is the only expedient means by which a transfer to General Finance Limited of the whole of the undertakings of the subsidiary companies can be effected

efficiently and economically and without disruption to the conduct and continuity of the business of General Finance Limited, its clients, and the clients of its subsidiary companies:

E. The objects of this Act cannot be efficiently and economically attained without the authority of Parliament. 5

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the General Finance Limited Act 1987. 10

2. Interpretation—In this Act, unless the context otherwise requires,—

“Appointed time” means the commencement of the 1st day of April 1988:

“The Company” means General Finance Limited: 15

“Debenture trust deed” means the debenture trust deed dated the 10th day of September 1981 as modified by a deed of modification dated the 26th day of September 1986, the parties to which are the Company, the Part I subsidiary companies, certain other subsidiaries of the Company, and The Trustees Executors and Agency Company of New Zealand Limited: 20

“Land” has the meaning assigned to it in section 2 of the Land Transfer Act 1952: 25

“Liabilities” means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere): 30

“Part I subsidiary company” means a subsidiary company specified in Part I of the Schedule to this Act:

“Property” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of the foregoing, includes— 35

(a) Choses in action and money;

(b) Goodwill;

(c) Rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created, or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective: 40

“Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

5 “Security” means a mortgage, submortgage, charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the payment of money or for the discharge of any other obligation or liability; and in any case whether upon demand or otherwise, whether present or future, and whether actual or contingent; and includes an acknowledgement of debt (whether or not otherwise secured) and an agreement or undertaking to give or execute whether upon demand or otherwise any of the foregoing:

10 “Subsidiary company” means any company specified in the Schedule to this Act:

15 “Undertaking”, in relation to any subsidiary company, means the property, rights, and liabilities of the subsidiary company.

3. Act to bind the Crown and other persons—This Act shall bind the Crown and every person whose property, rights or liabilities are affected by any provision of this Act.

25 **4. Transfer of undertakings of subsidiary companies**—At the appointed time the undertaking of each of the subsidiary companies shall, by virtue of this Act, vest in the Company.

5. Consequential provisions on transfer of undertakings—Without limiting the generality of section 4 of this Act, the following provisions shall have effect from the appointed time—

30 (a) A reference (whether express or implied) to any subsidiary company in any regulation, order, or notice made or given under any enactment, or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or after the appointed time shall be read and construed as a reference to the Company:

35 (b) Every contract, agreement, conveyance, deed, lease, licence, security, instrument, undertaking, and notice (whether or not in writing) entered into by, made with, given to or by, or addressed to any subsidiary

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- company (whether alone or with any other person) before the appointed time and subsisting immediately before that time shall, to the extent that it was previously binding on and enforceable by, against, or in favour of the subsidiary company, be binding on and enforceable by, against, or in favour of the Company as fully and effectually in every respect as if, instead of the subsidiary company, the Company had been the person by whom it was entered into, with whom it was made, or to or by whom it was given or addressed, as the case may be: 5 10
- (c) An instruction, order, direction, mandate, or authority given to any subsidiary company and subsisting immediately before the appointed time shall be deemed to have been given to the Company: 15
- (d) A security held by any subsidiary company as security for a debt or other liability to the subsidiary company incurred before the appointed time shall be available to the Company as security for the discharge of that debt or liability; and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the Company incurred from the appointed time; and, in relation to any security, the Company shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the subsidiary company would have been entitled or subject if this Act had not been passed: 20 25
- (e) All the rights and liabilities of any subsidiary company as bailor or bailee of documents or chattels shall be vested in and assumed by the Company: 30
- (f) A negotiable instrument or order for payment of money which before the appointed time is drawn on, given to, or accepted or indorsed by any subsidiary company or payable at the place of business of any subsidiary company shall, unless the context otherwise requires, have the same effect from that time as if it had been drawn on, given to, or accepted or indorsed by the Company instead of the subsidiary company or was payable at the place of business of the Company; except that nothing in this paragraph shall operate or be construed as a merger of the parties to any negotiable instrument: 35 40

5 (g) Any action, arbitration, proceedings, or cause of action which immediately before the appointed time is pending or existing by, against, or in favour of any subsidiary company or to which a subsidiary company is a party may be prosecuted, and without amendment of any writ, pleading or other document, continued and enforced by, against, or in favour of the Company.

10 **6. Certain matters not affected by transfer of undertakings to Company**—Nothing effected or authorised by this Act—

- 15 (a) Shall be regarded as placing any subsidiary company, the Company, or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) Shall be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
- 20 (c) Shall be regarded as placing any subsidiary company, the Company, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
- 25 (d) Shall release any surety wholly or in part from any obligation; or
- (e) Shall invalidate or discharge any contract or security.

30 **7. Provisions relating to charges**—(1) No subsidiary company shall create, or permit to remain registered, any charge over the property of the subsidiary company, other than a charge created by the debenture trust deed.

35 (2) In the event that there is any charge registered over the property of any subsidiary company at the appointed time, other than a charge created by the debenture trust deed, the Company shall forthwith ensure that the charge is released (whether by meeting the liabilities of the charge or otherwise) and, until the Company does so, the property subject to the charge shall continue to be subject to the charge notwithstanding that the undertaking of the subsidiary

40 company (including that property) has been vested in the Company and the subsidiary company has been dissolved.

(3) The charge created by each Part I subsidiary company by virtue of the debenture trust deed is hereby deemed to be

satisfied in respect of that subsidiary company upon the vesting of the undertaking of that subsidiary company in the Company, and the undertaking as so vested is hereby deemed to be subject to the charge created by the Company by virtue of that deed together with the assets of the Company as also charged under that deed. 5

8. Documents, etc. to remain evidence—(1) Any document, matter, or thing, which if this Act had not been passed would have been admissible in evidence in respect of any matter for or against any subsidiary company shall, from the appointed time, be admissible in evidence in respect of the same matter for or against the company. 10

(2) In this section, the term “document” has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980. 15

9. Registers—(1) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of this Act to charge the name of any subsidiary company to that of the Company in those books or registers or in any document. 20

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer by the Company,—

(a) Executed or purporting to be executed by the Company; and 25

(b) Relating to any property held by a subsidiary company immediately before the appointed time; and

(c) Containing a recital that that property has become vested in the Company by virtue of this Act—

shall, in the absence of proof to the contrary, be sufficient evidence that the property is vested in the Company. 30

(3) Except as provided in this section, nothing in this Act shall derogate from the provisions of the Land Transfer Act 1952.

10. Taxes and duties—For the purposes of the Acts specified in the First Schedule to the Inland Revenue Department Act 1974 and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge— 35

(a) Each of the subsidiary companies and the Company shall be deemed to be the same person with effect at and from the appointed time; and 40

(b) In respect of the liability for and the assessment, determination, or imposition of taxes, duties, levies, or other charges accruing as from the appointed time under any such enactment, all transactions entered into by, and acts of, each subsidiary company before the appointed time shall be deemed to have been entered into by, or to be those of, the Company and to have been entered into or performed by the Company at the time when they were entered into or performed by the subsidiary company.

11. Dissolution of subsidiary companies—(1) The subsidiary companies are hereby deemed to be dissolved with effect from the appointed time with the same effects in all respects as if the subsidiary companies had been wound up in accordance with the Companies Act 1955 pursuant to a resolution for voluntary winding up; and as if the requirements of the Companies Act 1955 relating to such winding up and dissolution of the subsidiary companies had been complied with.

(2) Notwithstanding the dissolution of the subsidiary companies by subsection (1) of this section, for the purposes of the Securities Regulations 1983 the Part I subsidiary companies shall be deemed to remain part of the group (within the meaning of that term in those regulations) of which the Company is the issuer.

12. Private Act—This Act is hereby declared to be a private Act.

SCHEDULE

Section 2

PART I

Autokred Corporation Limited
General Finance Acceptance Limited
Industrial Advances Limited
New Zealand Credit Corporation Limited
Tasman Investments Limited

PART II

DASL Investments Limited
General Bills Limited
General Finance (Wairarapa) Limited
Smartcard Funds Transfer Limited