



New South Wales

Bank Mergers (Advance Bank) Regulation 1998

under the
Bank Mergers Act 1996

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Bank Mergers Act 1996*.

MICHAEL EGAN, M.L.C..
Treasurer

Explanatory note

The object of this Regulation is to provide for the merger of Advance Bank Limited (*Advance Bank*) with St.George Bank Limited (*St.George*).

The Regulation is made pursuant to the powers contained in sections 4–6 of the *Bank Mergers Act 1996*.

Part 1 Preliminary

Clause 1 specifies the name of the Regulation.

Clause 2 provides for the commencement of the Regulation.

Clause 3 defines certain words and expressions used in the Regulation.

Clause 4 provides that this explanatory note and the table of contents do not form part of the Regulation.

Part 2 Bank reorganisation

Clause 5 provides that St.George will become the successor in law of Advance Bank on the succession day and dissolves Advance Bank on that day. The provision makes it clear that St.George is the universal successor of Advance Bank for all purposes, including private international law.

Clause 6 confirms that the assets and liabilities of Advance Bank vest in St.George on the succession day.

Clause 7 continues the effect of instruments to which Advance Bank was a party, as if St.George were referred to in the instruments.

Clause 8 provides that places of business of Advance Bank will be taken to be places of business of St.George.

Clause 9 substitutes St.George as a party in existing legal proceedings instead of Advance Bank and provides for evidence in proceedings to be admissible against St.George in the same way it was admissible against Advance Bank before the succession day.

Clause 10 confirms that the staff of Advance Bank will become the staff of St.George without affecting their continuity or conditions of service or any rights to leave or that are related to superannuation or retirement benefits.

Clause 11 provides that directors of Advance Bank cease to hold office on and from the succession day and are not by virtue only of the proposed Regulation directors of St.George.

Clause 12 makes it clear that customers and depositors of Advance Bank are to have the same relationship with St.George.

Clause 13 requires St.George to do whatever is necessary to ensure that proposed Part 2 (which provides for St.George to be the successor of Advance Bank) is effective, particularly in relation to its business outside New South Wales

Clause 14 requires St.George, within one month after the succession day, to request that Advance Bank's authority to carry on banking business in Australia be revoked

Clause 15 enables St.George to use business names associated with Advance Bank and its predecessors.

Part 3 Miscellaneous

Clause 16 prevents proposed Part 2 from operating unless the amount (if any) determined by the Treasurer for taxes, charges, duties or other imposts in relation to the merger of the banks is paid. The Treasurer may give a certificate to the bank concerned when satisfied that the required amount has been paid.

Clause 17 empowers an authorised person to certify certain matters for the purposes of the proposed Act, including matters relating to assets or acts done for such purposes.

Clause 18 deems St.George to be the registered proprietor of any interest in land held by Advance Bank immediately before the succession day and prevents the Registrar-General from enquiring into whether St.George has become the owner.

Clause 19 enables St.George to comply with the requirements of the *Corporations Law* for notice of change of ownership of charges to be given in respect of all charges of Advance Bank by lodging a certificate signed by an authorised person.

Clause 20 requires a person or authority who has, under New South Wales law responsibility for keeping a register of assets to register St.George as the owner of any assets of which St.George has become the owner by virtue of the proposed Act, if a certificate by an authorised person is given to that effect.

Clause 21 provides that a document purporting to be a certificate under the proposed Part is taken to be such a certificate and to have been properly given, unless the contrary is proved.

Clause 22 makes the public documents of Advance Bank public documents of St.George for the purposes of sections 156 to 158 of the *Evidence Act 1995*

Clause 23 construes references in Acts and other documents to Advance Bank as references to St.George.

Clause 24 makes it clear that the Regulation has effect despite anything in any contract, deed, undertaking, agreement or other instrument and prevents St.George, Advance Bank or any other person from being in breach of a law of New South Wales, a contractual provision or other condition because of the operation of the Regulation. The provision also makes it clear that the Regulation does not exempt St. George from having to comply with any Act relating to companies carrying on the business of banking.

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	5
2 Commencement	5
3 Definitions	5
4 Notes	7
Part 2 Bank reorganisation	
5 Consequence of succession day	8
6 Assets and liabilities	8
7 Translated instruments	9
8 Places of business	9
9 Legal proceedings and evidence	9
10 Transfer of staff	10
11 Directors	10
12 Relationships with customers and depositors	10
13 St.George to do what is necessary to carry out reorganisation	10
14 Revocation of banking authority	10
15 Business names	11
Part 3 Miscellaneous	
16 Payment of an amount instead of State duties or other imposts	12
17 Certificates evidencing operation of Regulation	13
18 Interests in land	13
19 Company charges	14
20 Other assets	14
21 Documents purporting to be certificates	15
22 Evidence	15
23 Construction of references	15
24 Regulation to have effect despite other laws	15

Bank Mergers (Advance Bank) Regulation 1998

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Bank Mergers (Advance Bank) Regulation 1998*.

2 Commencement

This Regulation commences on 1 April 1998.

3 Definitions

(1) In this Regulation:

Advance Bank means Advance Bank Australia Limited (ACN 002 953 335).

asset means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent or tangible or intangible) in real or personal property of any kind, and
- (b) any chose in action, and
- (c) any right, interest or claim of any kind, including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing), and
- (d) any asset within the meaning of Part IIIA of the *Income Tax Assessment Act 1936* of the Commonwealth.

authorised person for the purposes of a provision of this Regulation means:

- (a) the Treasurer, or
- (b) the chief executive officer of St. George, or

1998 No 92

Clause 3 Bank Mergers (Advance Bank) Regulation 1998

Part 1 Preliminary

(c) any of the following persons, if the Treasurer designates in writing that person as an authorised person for the purposes of the provision:

- (i) a senior executive of St.George,
- (ii) a member of the Chief Executive Service or the Senior Executive Service of the Public Service.

chief executive officer of St.George means the officer having the day to day management of the affairs of St.George and includes an officer acting from time to time in that capacity.

instrument includes a document and an oral agreement.

interest, in relation to land, includes:

- (a) a legal or equitable estate or interest in the land, or
- (b) a right, power or privilege over, or in relation to, the land.

liability includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective).

St.George means St.George Bank Limited (ACN 055513070).

succession day means the day on which this Regulation commences.

translated asset means an asset referred to in clause 6.

translated liability means a liability referred to in clause 6.

translated instrument, in relation to Advance Bank, means an instrument (including a legislative instrument other than this Regulation) subsisting immediately before the succession day:

- (a) to which Advance Bank is a party. or
- (b) that was given to. by or in favour of, Advance Bank. or
- (c) that refers to Advance Bank, or
- (d) under which money is. or may become, payable or other property is, or may become. liable to be transferred, to or by Advance Bank.

- (2) Where reference is made in this Regulation to anything done for a purpose connected with, or arising out of, the operation or effect of this Regulation, that reference is taken to include any transaction entered into, or any instrument or document made, executed, lodged or given, for that purpose.

4 Notes

The explanatory note and table of contents do not form part of this Regulation.

Part 2 Bank reorganisation

5 Consequence of succession day

- (1) On the succession day, in accordance with the principle of succession in law:
 - (a) St.George becomes the successor in law of Advance Bank and is for all purposes a continuation of and the same legal entity as Advance Bank, and
 - (b) Advance Bank is liquidated and dissolved.
- (2) Nothing in any other provision of this Part limits the operation of this clause.

6 Assets and liabilities

- (1) On the succession day:
 - (a) all assets of Advance Bank, wherever located, vest in, or are otherwise available for the use of, St.George without the need for any conveyance, transfer, assignment or assurance and without the need for any prior notice or further act, and
 - (b) all liabilities of Advance Bank, wherever located, become liabilities of St.George without the need for any prior notice or further act.
- (2) On and from the succession day St.George may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability in its own name, in the name of Advance Bank or the name of any predecessor in title to Advance Bank.

7 Translated instruments

- (1) Each translated instrument in respect of Advance Bank continues to have effect, according to its tenor, on and after the succession day, as if a reference in the instrument to Advance Bank were a reference to St.George.

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- (2) Without limiting subclause (1), an instrument securing the payment of moneys owing to Advance Bank is taken to secure moneys owing to St.George for the purposes of determining liability for stamp duty in respect of that instrument or any collateral instrument.

8 Places of business

On and after the succession day, a place that, immediately before that day, was a place of business of Advance Bank is taken to be a place of business for St.George.

9 Legal proceedings and evidence

- (1) Where, immediately before the succession day, proceedings (including arbitration proceedings) to which Advance Bank was a party were pending or existing in any court or tribunal, St.George is, on that day, substituted for Advance Bank as a party to the proceedings and has the same rights in the proceedings as Advance Bank had.
- (2) Where, before the succession day, documentary or other evidence would have been admissible for or against the interests of Advance Bank, that evidence is admissible, on or at any time after that day, for or against the interests of St.George.

10 Transfer of staff

On the succession day each employee of Advance Bank ceases to be employed by Advance Bank and becomes an employee of St.George on the same terms and conditions as those that applied immediately before the succession day and this section does not:

- (a) affect his or her contract of employment, or
- (b) interrupt his or her continuity of service, or
- (c) prejudice his or her existing or accruing rights to recreation leave, sick leave, superannuation or long service leave or any other employee entitlement existing immediately before the succession day, or
- (d) affect rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of Advance Bank, or

1998 No 92

Clause 10 Bank Mergers (Advance Bank) Regulation 1998

Part 2 Bank reorganisation

- (e) constitute a retrenchment or redundancy or give rise to any right of the employee to receive any payment or other benefit.

11 Directors

A person holding office as a director or secretary of Advance Bank immediately before the succession day ceases to hold office on and from the succession day and is not by virtue only of this Regulation a director or secretary of St.George.

12 Relationships with customers and depositors

- (1) The relationship between Advance Bank and a customer or depositor at an office or branch or agency of Advance Bank is, on and after the succession day, between St.George and that customer or depositor, and gives rise to the same rights and duties (including rights of set-off) as would have existed before that day if that relationship had always been between St.George and the customer or depositor.
- (2) Any instruction, order, direction, mandate or authority given by that customer or depositor to Advance Bank and subsisting on or given after the succession day is, unless and until revoked or cancelled, taken to have been given to St.George.
- (3) Any information held immediately before the succession day by Advance Bank relating to a customer or depositor of Advance Bank at that time is available to and may be used by St.George on and after the succession day.

13 St.George to do what is necessary to carry out reorganisation

St.George must do whatever is necessary to ensure that this Part is fully effective, particularly in relation to its business outside New South Wales, whether within or outside Australia.

14 Revocation of banking authority

Within one month following the succession day, St.George must by notice in writing to the Treasurer in accordance with section 9 of the *Banking Act 1959* of the Commonwealth request that the authority), to carry on banking business in Australia granted to Advance Bank be revoked.

15 Business names

- (1) St.George may, in addition to any other name it is entitled to use, operate in this State under any of the following names (the *permitted business names*):
 - (a) Advance Bank Australia,
 - (b) Bank of South Australia,
 - (c) BankSA.
- (2) For a period of 6 months commencing on the succession day, St.George may also operate in this State under either of the following names:
 - (a) Advance Bank Australia Limited,
 - (b) BankSA. a division of Advance Bank Australia Limited.
- (3) This clause does not prevent St.George from registering any of the permitted business names, or any other name, under the *Business Names Act 1962*.
- (4) In this clause, a reference to operating under a name includes a reference to engaging in any conduct in respect of which, for the purpose of the *Business Names Act 1962*, that name would (but for subclause (1)) have been required to be registered.

Part 3 Miscellaneous

16 Payment of an amount instead of State duties or other imposts

- (1) Despite any other provision of this Regulation, Part 2 does not have effect 'unless any requirement made under this clause has been complied with or the Treasurer determines that no requirement is to be made. The Treasurer may issue a certificate to that effect under subclause (4) or (5).
- (2) The Treasurer may require St.George to pay to the Treasurer instead of all duties, taxes, charges, rates or other imposts for which St.George or Advance Bank would be liable under the law of this State as a result of, or in connection with, the merger of Advance Bank with St.George an amount that is, in the opinion of the Treasurer, proper in the circumstances.
- (3) The amount payable to the Treasurer is to be determined by the Treasurer in accordance with such principles as the Treasurer thinks appropriate.
- (4) The Treasurer must, when satisfied that a requirement under this clause has been complied with, give St.George a certificate stating that the requirement has been complied with.
- (5) If the Treasurer determines that no requirement will be made under this clause, the Treasurer must give St.George a certificate stating that no requirement is to be made.
- (6) If a certificate is given under subclause (4) or (5), St.George is not liable for any duties, taxes, charges, rates or other imposts of a kind referred to in subclause (2), despite the provisions of any Act relating to the payment of duties, taxes, charges, rates or other imposts.
- (7) A copy of a certificate under this clause, certified as such by the chief executive officer of St.George, or a person authorised to do so by the chief executive officer, is for all purposes and in all courts, tribunals and proceedings, conclusive evidence of the matters certified.
- (8) This clause does not apply to any duties, taxes, charges, rates or other imposts:

- (a) payable to the Australian Securities Commission under the *Corporations Law, Corporations Regulations, ASC Law or ASC Regulations*, or
- (b) payable to the Registrar-General in respect of any act, dealing or other transaction relating to land.

17 Certificates evidencing operation of Regulation

- (1) An authorised person may, by certificate signed by that person, certify any matter in relation to the operation or effect of this Regulation and, in particular, may certify that:
 - (a) a specified matter or thing relevant to St.George is an aspect of the operation or effect of this Regulation, or
 - (b) a specified thing was done for a purpose connected with, or arising out of, the operation or effect of this Regulation in relation to St.George, or
 - (c) a specified asset of Advance Bank has become a translated asset of St.George, or
 - (d) a specified liability of Advance Bank has become a translated liability of St.George, or
 - (e) a specified asset or liability of Advance Bank, being a liability or asset transferred to Advance Bank under the *Bank Merger (BankSA and Advance Bank) Act 1996* of South Australia, as applied in this State by proclamation under the *Bank Mergers (Application of Laws) Act 1996*, dated 28 November 1996 (Gazette No 137 of 1996, p 7718), has become a translated asset or a translated liability of St.George.
- (2) For all purposes and in all courts, tribunals and proceedings, a certificate under subclause (1) is conclusive evidence of the matters certified.

18 Interests in land

- (1) Without prejudice to the generality of this Regulation and despite anything to the contrary in any other Act or law, if, immediately before the succession day. Advance Bank is, or is to be taken to be. the registered proprietor of an interest in land under the *Real Property Act 1900*, on and after the succession day:

1998 No 92

Clause 18 Bank Mergers (Advance Bank) Regulation 1998

Part 3 Miscellaneous

- (a) St.George is to be taken to be the registered proprietor of that interest in land, and
 - (b) St.George has the same rights and remedies in respect of that interest as Advance Bank had.
- (2) No person dealing with St.George (in any capacity at all), nor the Registrar-General, nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, is, in respect of any dealing or transaction in relation to land entered into or purporting to be entered into by St.George, where the registered proprietor of that land is Advance Bank, to be concerned to see, or enquire into, whether the land has vested in St.George.

19 Company charges

- (1) Section 268 (1) of the *Corporations Law* is taken to have been complied with in respect of all charges of which St.George becomes the holder by virtue of this Regulation if there is lodged with the Australian Securities Commission a certificate signed by an authorised person stating that by virtue of this Regulation the assets and liabilities of Advance Bank have become vested in St.George and if St.George pays the fee referred to in subclause (2).
- (2) The fee payable in relation to the lodgment of the certificate under subclause (1) is to be an amount agreed on between St.George and the Australian Securities Commission, or the total amount payable for lodgment of the transfer of the charges detailed in the certificate as prescribed by the regulations made under the *Corporations Law*, whichever is the lesser.

20 Other assets

- (1) If:
- (a) an asset (other than an interest in land referred to in clause 18 or a company charge referred to in clause 19) becomes under this Regulation an asset of St.George, and
 - (b) any person or authority has, under a law of this State, responsibility for keeping a register in respect of assets of that kind.

then:

- (c) any requirement of that law relating to the transfer of the property from one person to another is taken to have been complied with if there is lodged with that person or authority a certificate signed by an authorised person stating that by virtue of this Regulation the assets and liabilities of Advance Bank have vested in St.George, and
 - (d) that person or authority, on being requested to do so, must make any amendments to that register which are necessary to make it accurately reflect the effect of this Regulation.
- (2) This clause does not affect the operation of the *Corporations Law*.

21 Documents purporting to be certificates

A document purporting to be a certificate given under this Part is, unless the contrary is established, taken to be such a certificate and to have been properly given.

22 Evidence

- (1) The public documents of Advance Bank are for the purposes of sections 156 to 158 of the *Evidence Act 1995* taken to be, and to have been, public documents used in the ordinary business of St.George.
- (2) For the purposes of this clause, *public documents* has the same meaning as in section 3 of the *Evidence Act 1995*.

23 Construction of references

If any Act or regulation (other than this Act or Regulation) or any document whenever made or executed (other than a document constituting or relating to a provident, benefit, superannuation or retirement fund) or any register established or kept under any Act contains any reference express or implied to Advance Bank, the reference is, on and after the appointed day, to be read as a reference to St.George, unless the context otherwise requires.

24 Regulation to have effect despite other laws

- (1) This Regulation has effect despite anything in any contract, deed, undertaking, agreement or other instrument (whether made before or after this Regulation).

1998 No 92

Clause 24 Bank Mergers (Advance Bank) Regulation 1998

Part 3 Miscellaneous

- (2) Nothing done by or under this Regulation:
- (a) places St.George, Advance Bank or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong, or
 - (b) places St.George, Advance Bank or another person in breach of:
 - (i) any law of New South Wales, or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information, or
 - (c) fulfils any condition which allows a person to terminate or otherwise exercise a right or power under any agreement or liability, or
 - (d) releases any surety or other obligor, wholly or partly, from any liability, whether actual, contingent or prospective.
- (3) Without limiting subclause (1). where, apart from this clause, the advice or consent of a person would be necessary in any particular respect in order to give effect to this Regulation, the advice is taken to have been obtained or the consent is taken to have been given, as the case requires.
- (4) Nothing in this Regulation exempts St.George from the provisions of any Act or statutory instrument relating to companies carrying on the business of banking.