



BANK MERGER (BANKSA AND ADVANCE BANK) ACT 1996

No. 41 of 1996

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ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 41 of 1996

An Act to provide for the merger of the Bank of South Australia with Advance Bank; and for other purposes.

[Assented to 20 June 1996]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Bank Merger (BankSA and Advance Bank) Act 1996*.

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.

(2) The provision for automatic commencement of statutory provisions 2 years after assent¹ does not apply to this Act.

Interpretation

3. In this Act, unless the contrary intention appears—

"ABAL" means Advance Bank Australia Limited;

"ABAL subsidiary" means a body corporate that is a subsidiary of ABAL for the purposes of section 46 of the *Corporations Law*;

"appointed day" means a day fixed by proclamation as the appointed day for the purposes of this Act;

"asset" includes—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property;

¹ See *Acts Interpretation Act 1915*, s 7(5).

- (b) a present, contingent or future right, power or privilege or immunity (including a present or future cause of action in favour of BSAL);
- (c) an asset (as defined above) held in a fiduciary capacity;

"BSAL" means the Bank of South Australia Limited;

"cause of action" includes any right to bring, defend or participate in legal proceedings;

"CEO" of ABAL means the chief executive officer of ABAL or a delegate of the chief executive officer;

"document" includes a disc, tape or other medium in which information is stored;

"employee" includes officer;

"excluded asset" means—

- (a) an asset classified as an excluded asset in the Schedule; or
- (b) an asset related to an excluded liability;

"excluded liability" means—

- (a) a liability classified as an excluded liability in the Schedule; or
- (b) a liability related to an excluded asset;

"guarantee" includes an indemnity;

"instrument" includes—

- (a) a legislative instrument;
- (b) a judgment, order or process of a court;
- (c) any other document;

"legal proceedings" includes an arbitration or an administrative proceeding;

"land" includes an estate or interest in land, or an interest in respect of land;

"liability" includes—

- (a) a present, future or contingent liability (arising at law or in equity);
- (b) a duty or non-pecuniary obligation;
- (c) in relation to BSAL — a present or future cause of action against BSAL;

"security" means—

- (a) a mortgage or charge; or

- (b) a guarantee; or
- (c) another instrument acknowledging, evidencing, recording, imposing or securing a liability for the payment of money or the discharge of a liability;

"**transferred asset**" means an asset transferred to ABAL under this Act;

"**transferred employee**" means an employee of BSAL who becomes an employee of the ABAL or an ABAL subsidiary under this Act;

"**transferred liability**" means a liability transferred to ABAL under this Act;

"**undertaking**" of BSAL means—

- (a) all assets of BSAL except excluded assets; and
- (b) all liabilities of BSAL except excluded liabilities;

Act to bind the Crown

4. This Act binds the Crown not only in right of the State but (so far as the State's legislative power extends) in all its other capacities.

Extra-territorial application

5. (1) This Act applies both within and outside the State.

(2) This Act applies outside the State to the full extent of the extra-territorial legislative power of the State.

PART 2
VESTING OF BSAL'S UNDERTAKING IN ABAL

Vesting of undertaking

6. (1) On the appointed day, BSAL's undertaking is transferred to, and vested in, ABAL.

(2) The transfer of assets and liabilities under this section has effect despite the provisions of any other law or instrument.

(3) The transfer of a liability under this section discharges BSAL from the liability.

Conditions of transfer

7. (1) The CEO may, by order in writing, fix terms on which BSAL's undertaking is transferred.

(2) The terms of transfer may create, and define the extent of, rights and liabilities.

Transitional provisions

8. The following transitional provisions apply—

- (a) for the purpose of construing an instrument or an oral agreement, understanding or undertaking so far as it applies to the transferred asset or liability—
- (i) a reference to BSAL is to be construed as a reference to ABAL; and
 - (ii) a reference to a branch, or agency of BSAL is to be construed as a reference to the corresponding branch, office or agency of ABAL or a branch, office or agency designated by the CEO as the corresponding branch, office or agency; and
 - (iii) a reference to an officer of BSAL is to be construed as a reference to the corresponding officer of ABAL or an officer designated by the CEO as the corresponding officer; and
- (b) the relationship of banker and customer existing between BSAL and a customer in relation to a transferred asset or transferred liability immediately before the transfer took effect continues between ABAL and the customer after the transfer takes effect and gives rise to the same rights (including rights of set-off) and the same liabilities as would have arisen if there had been no transfer; and
- (c) an instruction, order, mandate, authority or notice given to BSAL before the transfer took effect is, so far as it is referable to a transferred asset or transferred liability, taken to have been given to ABAL; and
- (d) if a security held by BSAL is referable to a transferred asset or transferred liability, then, so far as it is referable to the transferred asset or transferred liability—
- (i) ABAL becomes entitled or subject to rights, priorities and liabilities in relation to the security that BSAL would have had if there had been no transfer; and
 - (ii) the security is available to ABAL as security for the discharge of transferred liabilities including, where the security extends to future liabilities, liabilities incurred after the transfer; and

- (e) ABAL is entitled to possession of all documents to which BSAL was entitled immediately before the transfer took effect that are entirely referable to a transferred asset or transferred liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or transferred liability and another asset or liability that is not transferred; and
- (f) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by BSAL, is (if BSAL's liability under the instrument or order is a transferred liability) payable by ABAL in the same way as if it had been drawn by or on, or accepted or endorsed by, ABAL; and
- (g) a cheque drawn on an account transferred to ABAL is, although expressed to be drawn on the account formerly at BSAL, taken to have been drawn on the account at ABAL; and
- (h) if an account in respect of which a credit or debit card was issued by BSAL is transferred, the card is taken to have been issued by ABAL and to be the property of ABAL; and
- (i) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement, ABAL may exercise those rights without exposing BSAL to liability for parting with possession of the property, or permitting the possession or use of the property by another person, contrary to the terms of the lease or agreement; and
- (j) ABAL has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from BSAL as BSAL would have had if there had been no transfer; and
- (k) if, at the appointed day, legal proceedings had been commenced by or against BSAL or were continuing by or against BSAL because of a transfer of an interest to BSAL or BSAL's assumption of responsibility for conducting or defending the proceedings—
 - (i) the proceedings must (subject to discontinuance) be continued and completed by or against ABAL; and
 - (ii) ABAL will have the same rights and privileges as BSAL would have had if there had been no transfer; and
 - (iii) a document that could have been given in evidence by or against BSAL if there had been no transfer may be given in evidence by or against ABAL; and
- (l) ABAL may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability in its own name, in the BSAL's name, or if the asset or liability is held in the name of a predecessor in title to BSAL, in the name of the predecessor in title.

Direct payment orders to accounts transferred to BSAL

9. An instruction, order or mandate for payments to be made to an account at BSAL is, if the account at BSAL is transferred to ABAL under this Act, taken to be an instruction, order of mandate for the payments to be made to the account at ABAL.

Registration of title, etc

10. (1) The Registrar-General or other person required or authorised by law to register or record transactions affecting assets or liabilities—

- (a) may (without formal application) register or record in the appropriate manner the transfer of an asset or liability under this Act; and
- (b) must, on application by ABAL, register or record in the appropriate manner the transfer of an asset or liability under this Act.

(2) A transaction related to a transferred asset or transferred liability entered into by ABAL in BSAL's name or the name of a predecessor in title to BSAL, if effected by an instrument otherwise in registrable form, must be registered even though ABAL has not been registered as proprietor of the asset.

Exclusion of obligation to enquire

11. (1) A person dealing with ABAL is not obliged to enquire whether an asset to which the transaction relates is or is not a transferred asset.

(2) A person dealing with BSAL is not obliged to enquire whether an asset to which the transaction relates is or is not a transferred asset.

(3) If BSAL was entitled to an asset before the appointed day, and after that day, BSAL or ABAL purports to deal with the asset as if entitled to it, the transaction is valid even though the body corporate purporting to deal with the asset is not entitled to do so because the asset is, or is not, a transferred asset.

(4) However, this section does not validate a transaction if the party dealing with BSAL has actual notice of the deficiency of title, or acts fraudulently.

PART 3
GOVERNMENT GUARANTEE

Government guarantee

12. (1) The Treasurer guarantees that ABAL will satisfy transferred liabilities that were formerly guaranteed under section 20 of the *State Bank (Corporatisation) Act 1994*.

(2) Any money required under the guarantee is to be paid out of the Consolidated Account (which is appropriated to the necessary extent).

(3) Subject to the following qualifications, the guarantee expires on 1 July 1999—

- (a) if a written demand is made not later than 30 June 1999 for payment of a guaranteed liability falling due on or before that date, the guarantee continues in relation to the liability; and
- (b) if a written demand is made for payment of a guaranteed liability not later than six months after the liability falls due, the guarantee continues in relation to the liability even though—
 - (i) the demand is made on or after 1 July 1999; or
 - (ii) the liability falls due on or after 1 July 1999.

(4) For the purposes of subsection (3)—

- (a) a guaranteed liability is taken to fall due when the person in whose favour the liability exists first becomes entitled to require payment in discharge of the liability; and
- (b) where a guaranteed liability falls due by virtue of service of a written notice or demand, the notice or demand constitutes a written demand for payment of the liability.

(5) For the purposes of this section, payments or transfers of money from an account at ABAL containing a deposit guaranteed under this section are taken to diminish the guaranteed liability before any liability not guaranteed under this section.

(6) If the Treasurer makes a payment to a person under the guarantee, the Treasurer is subrogated, to the extent of the payment, to the person's rights (including rights of priority as a creditor in a winding-up) in respect of the liability guaranteed.

(7) In this section—

"deposit" includes money on current account and the bonds known as *Term Bonds* but does not include any other bond issue, note issue or other raising of capital in the capital markets.

**PART 4
STAFF****DIVISION 1—TRANSFER OF STAFF****Transfer of staff**

13. (1) The CEO may, by order in writing, transfer employees of BSAL to positions in the employment of ABAL or an ABAL subsidiary.

(2) An order under this section—

(a) must relate to all employees employed by BSAL at the date of the order; and

(b) must be made within 12 months after the appointed day.

(3) An employee to whom an order under this section relates ceases to be an employee of BSAL and becomes, in accordance with the order, an employee of ABAL or an ABAL subsidiary.

(4) A transfer under this section does not—

(a) affect the employee's remuneration; or

(b) interrupt continuity of service; or

(c) constitute a retrenchment or redundancy; or

(d) affect terms or conditions of employment; or

(e) affect rights accrued at the date of the transfer in respect of employment; or

(f) give rise to a superannuation entitlement or any other entitlement or remedy for cessation or change of employment.

(5) A transfer under this section must not involve—

(a) a reduction in the employee's status; or

(b) a change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience; or

(c) a change in the employee's place of employment unless—

(i) the change is in accordance with existing terms of employment; or

(ii) the new place of employment is within reasonable commuting distance from the employee's former place of employment.

(6) However—

(a) an employee's status is not reduced by—

(i) a reduction in the scope of business operations for which the employee is responsible; or

- (ii) a reduction in the number of employees under the employee's supervision or management,

if the general nature of the employee's responsibility after the transfer remains the same as, or similar to, the employee's responsibility before the transfer; and

- (b) the transfer of an employee under this section does not affect a power to vary terms and conditions of employment.

(7) On the transfer of an employee to the employment of a new employer under this section, all existing and accruing liabilities related to the employee's employment are transferred to the new employer.

Directors, secretaries and auditors

14. A director, secretary or auditor of BSAL does not become a director, secretary or auditor of ABAL as a result of a transfer of employment under this Part.

DIVISION 2—SUPERANNUATION

Definitions

15. In this Division—

"ABAL" includes an ABAL subsidiary;

"ABAL group" means ABAL and its subsidiaries;

"State Scheme" means the superannuation scheme established under the *Superannuation Act 1988*;

"scheduled provisions" means the provisions in Schedule 2 of the *State Bank (Corporatisation) Act 1994*;

"superannuation rights" means rights in relation to superannuation (including, where applicable, rights under the State Scheme).

Preservation of superannuation rights

16. (1) The superannuation rights of employees who are transferred from the BSAL's employment to ABAL's employment under this Act are unaffected by this Act.

(2) If an employee has rights under the State Scheme, those rights are unaffected by transfer of employment within the ABAL group.

(3) The scheduled provisions are to be read subject to amendments prescribed by regulation.

PART 5
MISCELLANEOUS

Stamp duty and other taxes

17. (1) No stamp duty, financial institutions duty, or debits tax is payable under a law of the State in respect of—

- (a) a transfer of assets or liabilities under this Act; or
- (b) an application or entry made, receipt given, or anything else done for the purpose of acknowledging, evidencing, recording, registering, or giving effect to a transfer of assets or liabilities under this Act.

(2) No obligation arises under an Act for the assessment or imposition of stamp duty, financial institutions duty or debits tax—

- (a) to lodge a statement or return relating to a transfer of assets or liabilities under this Act; or
- (b) to include information about such a transfer in a statement or return.

Evidence

18. (1) The CEO may issue a certificate certifying that specified assets or liabilities are, or are not, transferred assets or transferred liabilities.

(2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted in legal proceedings or by an administrative official as proof of the matter certified in the absence of proof to the contrary.

(3) The transfer of BSAL's undertaking to ABAL does not affect the character that records made by BSAL or a bank from which BSAL acquired the records may have as banking records for the purposes of the law of evidence.

Act overrides other laws

19. This Act has effect despite the *Real Property Act 1886* or any other law.

Effect of things done or allowed under Act

20. Nothing done or allowed under this Act—

- (a) constitutes a breach or, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or any other obligee wholly or in part from an obligation.

Name in which ABAL carries on business

21. (1) ABAL may carry on business in the State under any of the following names—

- (a) its own name; or
- (b) Bank of South Australia; or
- (c) BankSA; or
- (d) any other name registered under the *Business Names Act 1963*.

(2) *Bank of South Australia* and *BankSA* must, on application by ABAL, be registered as business names under the *Business Names Act 1963*.

Regulations and proclamations

22. The Governor may make regulations and proclamations for the purposes of this Act.

SCHEDULE
Excluded Assets and Liabilities

The following are classified as excluded assets or liabilities (as the case requires)—

- (a) BSAL's rights and liabilities under leasing and finance plan types 43, 49, 50, 51, 52, 53, 54 and 56 and under managed plan types 55 and 57;
- (b) BSAL's liabilities under its issued shares;
- (c) the shares in BSAL Financial Services Limited owned by BSAL;
- (d) all rights and liabilities in relation to BSAL's employees;
- (e) cash equal to the BSAL's retained earnings as at the appointed day.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor