

Western Australia

Advance Bank (Merger with St. George Bank) Act 1998

(No. 20 of 1998)

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No. 20 of 1998

**An Act to provide for matters relating to the merger of Advance
Bank Australia Limited with St.George Bank Limited and for
connected purposes.**

[Assented to 30 June 1998]

Reasons for enactment

1. Before the succession day Advance Bank Australia Limited (ACN 002 953 335) was a company incorporated in New South Wales and was a company within the meaning of the Corporations Law and was a company limited by shares.
2. St.George Bank Limited (ACN 055 513 070) is a company incorporated in New South Wales and is a company within the meaning of the Corporations Law and is a company limited by shares.
3. Before the succession day ABAL and SGB each carried on the business of banking throughout Australia.
4. By letter received on 18 December 1996, the Treasurer of Australia consented pursuant to section 63 of the *Banking Act 1959* of the Commonwealth to the amalgamation of the banking business of ABAL with that of SGB.
5. On 29 January 1997 SGB became the beneficial owner of the whole of the ordinary issued share capital of ABAL.
6. Under the conditions imposed on the authority of ABAL to carry on banking business in Australia, ABAL was required to surrender that authority.
7. Accordingly, it was necessary and expedient to transfer the banking business of ABAL to SGB which occurred by way of the principle of succession in law pursuant to the NSW Regulation.
8. Under the NSW Regulation on the succession day —
 - (a) SGB became the successor in law of ABAL and for all purposes a continuation of and the same legal entity as ABAL;
 - (b) ABAL was liquidated and dissolved;

- (c) all assets of ABAL, wherever located, vested in, or became otherwise available for the use of, SGB without the need for any conveyance, transfer, assignment or assurance and without the need for any prior notice or further act; and
 - (d) all liabilities of ABAL, wherever located, became liabilities of SGB without the need for any prior notice or further act.
9. It is expedient to enact legislation to make provision for matters relating to the merger.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Advance Bank (Merger with St. George Bank) Act 1998*.

2. Commencement

- (1) Subject to subsections (2) and (3), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Parts 2 and 3 (other than section 12) are to be taken to have come into operation on the succession day.
- (3) Subsection (2) comes into operation on the day on which a certificate is given under section 12.

3. Interpretation

- (1) In this Act, unless the contrary intention appears —
 - “**ABAL**” 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, tangible or intangible) in real or personal property of any kind;
 - (b) any chose in action;
 - (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;

“chief executive officer”, in relation to SGB, means the officer having the day to day management of the affairs of that bank and includes an officer acting from time to time in that capacity;

“instrument” includes a document and an oral agreement;

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

“merger” means the succession in law of SGB to ABAL under the NSW Regulation;

“NSW Regulation” means the *Bank Mergers (Advance Bank) Regulation 1998* of New South Wales as amended from time to time;

“register” includes a book of registry and an index of registration;

“SGB” means St. George Bank Limited (ACN 055 513 070);

“succession day” means 1 April 1998 (being the day on which the NSW Regulation came into operation);

“Taxing Act” means the *Advance Bank (Merger with St. George Bank) (Taxing) Act 1998*;

“translated asset”, in relation to SGB, means an asset that becomes, under the NSW Regulation, an asset of SGB;

“translated instrument” means an instrument subsisting immediately before the succession day —

- (a) to which ABAL is a party;
- (b) that was given to, by, or in favour of, ABAL;
- (c) that refers to ABAL; or

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- (d) under which money is, or may become, payable, or other property is, or may become, liable to be transferred, to or by ABAL;

“translated liability”, in relation to SGB, means a liability that becomes, under the NSW Regulation, a liability of SGB;

“Treasurer” means the Treasurer of the State.

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

4. Act binds the Crown

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, in all its other capacities.

5. Extra-territorial application

- (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 — Provisions relating to merger

6. Translated instruments

On and after the succession day, each translated instrument continues to have effect, according to its tenor, as if a reference in the instrument to ABAL were a reference to SGB.

7. Places of business

On and after the succession day, a place that, immediately before that day, was a place of business for ABAL is to be taken to be a place of business for SGB.

8. Legal proceedings and evidence

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

9. Business names

- (1) Subject to subsection (2), on and after the succession day SGB may carry on business in the State under any of the following names —
 - (a) “Advance Bank Australia”;
 - (b) “Bank of South Australia”;
 - (c) “BankSA”;

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- (d) any other business name registered by SGB under the *Business Names Act 1962*.
- (2) SGB must, during the transitional period, apply for the registration of “Advance Bank Australia”, “Bank of South Australia” and “BankSA” as business names under the *Business Names Act 1962*.
- (3) On receipt of an application referred to in subsection (2) during the transitional period and compliance by SGB with the relevant provisions of the *Business Names Act 1962* relating to the application, the Commissioner (within the meaning of that Act) is to register each business name set out in the application.
- (4) During the transitional period SGB may also carry on business in the State under either of the following names as if the names were registered as business names of SGB under the *Business Names Act 1962*—
 - (a) “Advance Bank Australia Limited”;
 - (b) “BankSA a Division of Advance Bank Australia Limited”.
- (5) In this section —
“**transitional period**” means the period of 6 months beginning on the day on which a certificate is given under section 12.

10. Relationships with customers and depositors

- (1) The relationship between ABAL and a customer or depositor of that bank is, on and after the succession day, between SGB 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 SGB and the customer and depositor.

- (2) Any instruction, order, direction, mandate or authority given to ABAL by a customer or depositor of that bank and subsisting on or given after the succession day is, unless and until revoked or cancelled, to be taken to have been given to SGB.
- (3) Any information held immediately before the succession day by ABAL relating to a customer or depositor of that bank is available to and may be used by SGB.

11. Construction of references

If any written law (other than this Act) or any document, whenever made or executed, or any register established or kept under any Act contains a reference express or implied to ABAL, the reference is, on and after the succession day, to be read and construed as a reference to SGB, unless the context otherwise requires.

Part 3 — Miscellaneous

12. Certificate for purposes of Taxing Act

- (1) The Treasurer must, when satisfied that the amount required to be paid under section 4 (1) of the Taxing Act has been paid, give SGB a certificate stating that the amount has been paid.
- (2) The Treasurer must cause a notice to be published in the *Gazette* showing the day on which a certificate was given under subsection (1).

13. Effect of certificate under section 12

If a certificate is given under section 12, then despite any other written law —

- (a) SGB is not liable for any taxes, duties or charges under the law of the State (other than fees or charges of the kind mentioned in section 4 (2) of the Taxing Act) in respect of, or in connection with, the vesting of any translated asset or translated liability in SGB; and
- (b) no obligation arises to lodge a statement or return relating to the vesting of any translated asset or translated liability in SGB, or to include information about the vesting in a statement or return.

14. Certificates evidencing operation of Act, etc.

- (1) The chief executive officer of SGB may, by certificate signed by that person, certify any matter in relation to the operation or effect of this Act and, in particular, may certify that —
 - (a) a specified matter or thing relevant to SGB is an aspect of the operation or effect of this Act;

- (b) a specified thing was done for a purpose connected with, or arising out of, the operation or effect of this Act in relation to SGB;
 - (c) a specified asset of ABAL has become a translated asset of SGB; or
 - (d) a specified liability of ABAL has become a translated liability of SGB.
- (2) The chief executive officer of SGB may certify that specified assets or liabilities are, or are not, assets or liabilities that vested in ABAL under the *Bank of South Australia (Merger with Advance Bank) Act 1996*.
- (3) Nothing done by or under this Act or under the NSW Regulation affects the character that records made by ABAL or a bank from which ABAL acquired the records may have as banking records for the purposes of the law of evidence.

15. Registered land

Where any land registered under the *Transfer of Land Act 1893* of which ABAL is, or is to be taken to be, the registered proprietor has become a translated asset of SGB, then despite anything to the contrary in a written law or other law, SGB is to be taken to be the registered proprietor of the land for the purposes of that Act and the land may be dealt with accordingly.

16. Amendment of land records

On being requested to do so and following —

- (a) delivery of any relevant Crown Grant or duplicate certificate of title or other relevant instrument; and
- (b) payment of any relevant fee under a written law,

the Registrar of Titles or Registrar of Deeds and Transfers, as the case requires, is to make any entry in, or any endorsement or

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notation on, the title, land register or other record in respect of land that is necessary because of the merger.

17. Other property

If property (other than property to which section 15 or 16 applies) has become a translated asset of SGB and a person or authority has, under a written law, responsibility for keeping a register in respect of property of that kind, then —

- (a) any requirement of that written law relating to the transfer of such property from one person to another is to be taken to have been complied with if there is lodged with that person or authority a certificate signed by the chief executive officer stating that the property has become a translated asset of SGB; and
- (b) that person or authority, on being requested to do so and on delivery of any relevant instrument, is to make any amendments to that register which are necessary to make it accurately reflect the fact that the property has become a translated asset of SGB.

18. Certificates as evidence

- (1) A certificate under section 12 or 14 is, for all purposes and in all courts, tribunals and proceedings, conclusive evidence of the matters certified except so far as the contrary is established.
- (2) A document purporting to be a certificate under section 12 or 14 is, unless the contrary is established, to be taken to be such a certificate and to have been properly given.

19. Act to have overriding effect

- (1) This Act has effect despite anything in any contract, deed, undertaking, agreement or other instrument.

- (2) Nothing done by or under this Act or under the NSW Regulation —
- (a) places SGB, ABAL or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong;
 - (b) places SGB, ABAL or another person in breach of —
 - (i) any written law or other law; 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) releases any surety, wholly or partly, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), where, but for this subsection, the advice or consent of a person would be necessary in a particular respect, the advice is to be taken to have been obtained or the consent is to be taken to have been given, as the case requires.

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