

**STATE BANK OF SOUTH
AUSTRALIA (TRANSFER OF
UNDERTAKING) ACT 1994**

No. 25 of 1994

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AN ACT to provide for the transfer of part of the undertaking of the State Bank of South Australia to a company formed to carry on the business of banking under the law of the Commonwealth, and for other purposes.

[Assented to 23 June 1994.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *State Bank of South Australia (Transfer of Undertaking) Act 1994*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Interpretation

3. In this Act —

“appointed day” means a day fixed as the appointed day by proclamation under the South Australian Act;

“asset” means property including property held in a fiduciary capacity;

“BSAL” means the public company with the name “Bank of South Australia Limited” formed under the Corporations Law;

“CEO” of BSAL means the chief executive officer of BSAL (however described) or a delegate of the chief executive officer;

“corresponding law” means the South Australian Act or a law of another State or a Territory providing for the transfer of assets and liabilities between —

(a) SBSA or SBSA subsidiaries; and

(b) BSAL;

“document” includes any disc, tape or other medium in which information is stored;

“guarantee” includes indemnity;

“instrument” includes a legislative instrument and a judgment, order or process of a court;

“legal proceedings” includes an arbitration and an administrative proceeding;

“liability” means a present, future or contingent liability (arising either at law or in equity) and includes a duty or non-pecuniary obligation;

“property” means real or personal property and includes —

- (a) a chose in action; and
- (b) a present, future or contingent right, privilege, interest or power;

“SBSA” means the State Bank of South Australia or, according to the context, that body as continued in existence under the name the “South Australian Asset Management Corporation”;

“SBSA subsidiary” means any company specified in, or classified by proclamation under, the South Australian Act as an SBSA subsidiary;

“security” means —

- (a) a mortgage, charge, lien, or pledge; or
- (b) a guarantee; or
- (c) any other security for, or instrument relating to, the payment of money or the discharge of any other liability;

“South Australian Act” means the *State Bank (Corporatisation) Act 1994* of South Australia, as amended from time to time;

“South Australian Treasurer” means the Treasurer of South Australia, and includes, in relation to a particular power or function under this Act, a Minister of the Crown in right of South Australia exercising or performing the power or function by delegation of the Treasurer of South Australia;

“transfer period” means the transfer period within the meaning of the South Australian Act;

“transferred asset” means an asset transferred to BSAL (and not re-transferred to SBSA or an SBSA subsidiary) under this Act or a corresponding law;

“transferred liability” means a liability transferred to BSAL (and not re-transferred to SBSA or an SBSA subsidiary) under this Act or a corresponding law;

“Treasurer” means the Treasurer of this State.

Act binds the Crown

4. This Act binds the Crown.

Transfer of assets and liabilities to BSAL

5. (1) The Treasurer may, with the concurrence of the South Australian Treasurer, by order in writing, transfer assets or liabilities (or both) of SBSA or an SBSA subsidiary to BSAL.

(2) An order under this section must be made within the transfer period.

(3) If an order is made under this section on or before the appointed day, it takes effect (subject to any contrary provision in the order) on the appointed day.

(4) An order under this section may be varied or revoked by the Treasurer, with the concurrence of the South Australian Treasurer, by further order in writing made before the order takes effect.

(5) A transfer of an asset or liability under this section operates by force of this Act and despite the provisions of any other law or instrument.

(6) The transfer of a liability under this section operates to discharge the body corporate from which the liability was transferred from the liability.

Conditions of transfer

6. The transfer of assets and liabilities under this Act has effect on the conditions fixed by the South Australian Treasurer under the South Australian Act.

Transitional provisions

7. The following transitional provisions apply in relation to transferred assets and liabilities —

(a) if an instrument or other document, or oral agreement, understanding or undertaking, is applicable to a transferred asset or liability, then for the purpose of construing the instrument or other document or oral agreement, understanding or undertaking (so far as it applies to the transferred asset or liability) —

(i) a reference to SBSA or an SBSA subsidiary is to be construed as a reference to BSAL; and

(ii) a reference to a branch, office, or agency of SBSA or an SBSA subsidiary is to be construed as a reference to the corresponding branch, office, or

agency of BSAL, or a branch, office or agency designated by the CEO of BSAL as the corresponding branch, office or agency; and

- (iii) a reference to an officer of SBSA or an SBSA subsidiary is to be construed as a reference to the corresponding officer of BSAL or an officer designated by the CEO of BSAL as the corresponding officer;

and

- (b) the relationship of banker and customer existing between SBSA and a customer in relation to a transferred asset or liability immediately before the transfer took effect continues between BSAL 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 SBSA or an SBSA subsidiary before the transfer takes effect is, so far as it is referable to a transferred asset or liability, taken to have been given to BSAL; and
- (d) if a security held by SBSA or an SBSA subsidiary is referable to a transferred asset or liability, then, so far as it is referable to the transferred asset or liability —
 - (i) the security is available to BSAL as security for the discharge of the liabilities to which it relates including, where the security extends to future liabilities, any such liabilities incurred after the transfer; and

(ii) BSAL is entitled to the same rights and priorities and subject to the same liabilities in relation to the security as those to which SBSA or the SBSA subsidiary would have been entitled or subject if there had been no transfer;

and

- (e) BSAL is entitled to possession of all documents to which SBSA or an SBSA subsidiary was entitled immediately before the transfer took effect that are entirely referable to a transferred asset or liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or liability and any other 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 SBSA, is (if SBSA's liability under the instrument or order is a transferred liability) payable by BSAL in the same way as if it had been drawn by or on, or accepted or endorsed (as the case may be) by BSAL; and
- (g) a cheque drawn on an account transferred to BSAL is, although expressed to be drawn on the account formerly at SBSA, taken to have been drawn on the account at BSAL; and
- (h) if an account in respect of which a credit or debit card was issued by SBSA or an SBSA subsidiary is transferred, the card is taken to have been issued by BSAL and to be the property of BSAL; and
- (i) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement, BSAL may exercise those rights without giving rise to any liability on the part of the body corporate from which the asset was transferred 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) BSAL has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from SBSA or an SBSA subsidiary as SBSA or the SBSA subsidiary would have had if there had been no transfer; and
- (k) legal proceedings in respect of a transferred asset or liability commenced by or against SBSA or an SBSA subsidiary must (subject to discontinuance) be continued and completed by or against BSAL; and
- (l) in legal proceedings relevant to a transferred asset or liability —
 - (i) BSAL will have the same rights and privileges as SBSA or the SBSA subsidiary would have had if there had been no transfer; and
 - (ii) a document that could have been given in evidence by or against SBSA or an SBSA subsidiary if there had been no transfer may be given in evidence by or against BSAL;

and

- (m) BSAL may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability either in its own name or in the name of the body corporate from which the asset or liability was transferred to BSAL.

Direct payment orders to accounts transferred to BSAL

8. An instruction, order or mandate given to a bank or other financial institution for payments to be made from an account at

the bank or other institution to an account at SBSA or an SBSA subsidiary is, if the account at SBSA or the SBSA subsidiary is transferred to BSAL under this Act or a corresponding law, taken to be an instruction, order or mandate for the payments to be made to the account at BSAL.

Registering authorities to note transfer

9. (1) The Registrar of Titles or any other authority required or authorized under a law of this State to register or record transactions affecting assets or liabilities, or documents relating to such transactions —

- (a) must, on the application of BSAL, register or record in the appropriate manner the transfer to BSAL of any transferred asset or liability; and
- (b) must register an instrument in registrable form, executed by BSAL, relating to property that is a transferred asset even though BSAL is not registered as the proprietor of the property.

(2) If property is registered in the name of SBSA or an SBSA subsidiary, the Registrar of Titles or other registering authority may register a dealing with the property by the body corporate in whose name the property is registered or by BSAL without being concerned to enquire whether the property is or is not a transferred asset.

Exclusion of obligation to enquire

10. (1) A person dealing with SBSA or an SBSA subsidiary is not obliged to enquire whether property to which the transaction relates is or is not a transferred asset.

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

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

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

Caveat in respect of land not transferred to BSAL

11. (1) SBSA or an SBSA subsidiary may lodge with the Registrar of Titles a caveat under Part V of the *Transfer of Land Act 1893* in respect of land under that Act that —

- (a) is land of which that body is the registered proprietor; and
- (b) is not a transferred asset.

(2) The caveat may forbid the registration of any dealing with the land by BSAL without the consent in writing of SBSA or the SBSA subsidiary concerned.

Re-transfer of assets or liabilities

12. (1) The Treasurer may, with the concurrence of the South Australian Treasurer, by order in writing, re-transfer assets or liabilities (or both) from BSAL to SBSA or an SBSA subsidiary.

(2) An order under this section must be made within the transfer period.

(3) The re-transfer of a liability under this section operates to discharge BSAL from the liability.

(4) The provisions of this Act relating to transferred assets or liabilities apply in a reciprocal way in relation to assets or liabilities re-transferred under this section with such modifications and exclusions as are necessary in the context.

Evidence

13. (1) A certificate issued by the South Australian Treasurer certifying that an asset or liability is or is not a transferred asset or liability is to be accepted in any legal proceedings as evidence of the matter so certified.

(2) An apparently genuine document purporting to be a certificate of the South Australian Treasurer under subsection (1) is to be accepted in any legal proceedings as such a certificate in the absence of proof to the contrary.

Transfer of staff

14. (1) The Treasurer may, with the concurrence of the South Australian Treasurer, by order in writing, transfer staff from the employment of SBSA or an SBSA subsidiary to the employment of BSAL.

(2) A transfer under this section does not —

- (a) affect the employee's remuneration; or
- (b) prejudice the employee's existing or accruing rights to recreation leave, sick leave, or long service leave; or
- (c) interrupt continuity of service; or
- (d) constitute a retrenchment or redundancy.

(3) A transfer under this section does not give rise to any right to damages or compensation.

Act overrides other laws

15. This Act has effect despite the provisions of any other law.

Effect of things done or allowed under Act

16. Nothing done or allowed under this Act —

- (a) constitutes a breach of, 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, 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 other obligee wholly or in part from an obligation.