

Western Australia

Bank Mergers Act 1997

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20 February 2004

Western Australia

Bank Mergers Act 1997

An Act to enable provision to be made for or with respect to the merger of banks by —

- regulations;
 - an order for the purpose of applying in this State the law of another State or a Territory; or
 - a combination of regulations and an order,
- and for related purposes.**

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Bank Mergers Act 1997*¹.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent¹.

3. Interpretation

In this Act, unless the contrary intention appears —

bank means —

- (a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or
- (b) a bank which carries on banking business on behalf of the government of a State under the authority of the laws of that State,

and includes a body corporate that is a subsidiary, within the meaning of the *Corporations Act 2001* of the Commonwealth, of an ADI mentioned in paragraph (a) or a bank mentioned in paragraph (b);

merger includes any transaction by which a bank acquires another bank, either by the transfer of the whole or part of the undertaking of the other bank, or by becoming the successor in law of the other bank, or by other means;

Taxing Act means the *Bank Mergers (Taxing) Act 1997*.

[Section 3 amended by No. 26 of 1999 s. 61; No. 10 of 2001 s. 220.]

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. Provision for merger ²

Provision for or with respect to the merger of 2 or more banks may be made by —

- (a) regulations under Part 2;
- (b) an order under section 15(1); or
- (c) a combination of regulations referred to in paragraph (a) and an order referred to in paragraph (b).

Part 2 — Regulations as to the merger of banks

6. Regulations, general power

- (1) The Governor may make regulations for or with respect to the merger of 2 or more banks.
- (2) The provisions of this Part (other than sections 7(2) and 11) do not limit subsection (1).

7. Regulations for merger

- (1) The regulations may make provision for or with respect to —
 - (a) the transfer of the whole or part of the undertaking of a bank to another bank and the vesting of the whole or part of that undertaking in the other bank;
 - (b) the succession of one bank as the successor in law of another bank and the effect of that succession, including —
 - (i) the vesting of assets or liabilities; and
 - (ii) the successor being for all purposes a continuation of and the same legal entity as the other bank;
 - (c) the liquidation or dissolution of a bank that is being merged with another bank;
 - (d) the obligations of the banks concerned in relation to the merger and related transactions;
 - (e) the relationship of a bank with the customers or depositors of another bank concerned; and
 - (f) the use of business names by the banks concerned.
- (2) Regulations made for the purposes of subsection (1)(c) may only be made with the approval of the Minister responsible for the administration of the *Corporations (Western Australia) Act 1990*.

8. Regulations as to effect of merger

The regulations may make provision for or with respect to the effect of the merger on —

- (a) existing contracts, agreements (oral or written), deeds, leases, licences and other instruments and other undertakings of a bank that is being merged with another bank;
- (b) custody or bailment of documents, goods or things held by the banks concerned;
- (c) existing securities of a bank that is being merged with another bank;
- (d) the employment, superannuation and related rights of staff of a bank that is being merged with another bank;
- (e) existing or pending legal proceedings and evidence in existing or future legal proceedings, and on legal rights and obligations; and
- (f) the liabilities of the banks concerned.

9. Regulations as to duties, taxes, etc.

The regulations may make provision for or with respect to the payment, or exemption from payment, by a bank of duties, taxes, charges, rates or other imposts.

10. Regulations as to miscellaneous matters

The regulations may make provision for or with respect to —

- (a) the construction of references to the banks concerned and any other persons or bodies affected by the merger;
- (b) service of documents on the banks concerned;
- (c) the transfer of assets or liabilities of a bank that is being merged with another bank and the recognition of the transfer by the Registrar of Titles or any other person or authority;

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- (d) the identification of assets or liabilities of a bank that is being merged with another bank;
- (e) the transfer of charges, and compliance with related statutory requirements, as a consequence of the merger;
- (f) evidence of matters related to the merger; and
- (g) provisions of a savings or transitional nature consequential on the merger and not specifically mentioned in this Part.

11. Prerequisite to regulations

Where a requirement has been made under section 3(3) of the Taxing Act, regulations cannot be made for the purposes of this Part until —

- (a) the requirement has been complied with; and
- (b) the Treasurer has given a certificate under section 19 to that effect.

12. Regulations may override provisions of another Act

Regulations made for the purposes of this Part may be expressed to have effect despite the provisions of any other Act relating to —

- (a) the payment of duties, taxes, charges, rates or other imposts; or
- (b) the registration of —
 - (i) ownership of assets; or
 - (ii) liabilities,

and, if so expressed, have effect accordingly.

13. Extra-territorial application

- (1) Regulations made for the purposes of this Part apply both within and outside the State.
- (2) The regulations apply outside the State to the full extent of the extra-territorial legislative power of the State.

Part 3 — Application of law of another State or a Territory

14. Definition

In this Part —

declared law means a law of another State or a Territory declared by order under section 15(1) to be a law to which this Act applies.

15. Declaration of law

- (1) The Governor may by order published in the *Gazette* declare a law of another State or a Territory providing for or relating to the merger of banks to be a law to which this Part applies.
- (2) An order under subsection (1) may —
 - (a) exclude specified provisions of the declared law from the operation of this Part;
 - (b) modify the effect of specified provisions of the declared law in their application under this Part; and
 - (c) add to the provisions of the declared law for the purposes of its application under this Part.
- (3) An order under subsection (1) may be made in respect of a law of another State or a Territory whether or not that law has commenced in that State or Territory.
- (4) An order under subsection (1) may be amended or revoked by further order published in the *Gazette*.
- (5) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (1) as if the order were a regulation.

16. Prerequisite to order

Where a requirement has been made under section 3(3) of the Taxing Act, an order cannot be made under section 15(1) until —

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- (a) the requirement has been complied with; and
- (b) the Treasurer has given a certificate under section 19 to that effect.

17. Application of declared law

- (1) A declared law applies in this State as if it were a law of this State.
- (2) However, in its application in this State a declared law is to be read subject to —
 - (a) the exclusions, modifications and additions, if any, set out in the relevant order, as amended by any further order; and
 - (b) the provisions of subsection (4).
- (3) The application in this State of a declared law is not affected by its amendment or repeal in the State or Territory in which it was enacted, except to the extent provided by the relevant order, as amended by any further order.
- (4) Provisions of a declared law relating to —
 - (a) the provision of government guarantees; or
 - (b) exemption from payment of duties, taxes, charges, rates or other imposts,

are excluded from the operation of subsection (1), except to the extent that the relevant order, as amended by any further order, includes them (and subject to any modifications or additions specified in the order).

Part 4 — Provisions supplementary to *Bank Mergers (Taxing) Act 1997*

18. Liability for amount

- (1) Where an amount is required to be paid under section 3(3) of the Taxing Act, the bank or banks concerned is or are liable for payment of the amount.
- (2) In the case of 2 or more banks, the banks are jointly and severally liable for the amount, unless the Treasurer otherwise determines.

19. Certificate to be given

- (1) The Treasurer must, when satisfied that a requirement under section 3(3) of the Taxing Act has been complied with, give the bank or banks subject to the requirement a certificate stating that the requirement has been complied with.
- (2) The Treasurer must, when satisfied that an amount required under section 3(3) of the Taxing Act to be paid on or after a day specified by the Treasurer has been paid, give the bank or banks subject to the requirement a certificate stating that the amount has been paid.

20. Effect of certificate

A certificate under section 19 is, for all purposes and in all courts, tribunals and proceedings, conclusive evidence of the matters certified.

Part 5 — Expiry of powers

21. Expiry of powers under this Act

No regulation or order can be made under this Act after 30 June 1997.

Notes

- ¹ This reprint is a compilation as at 20 February 2004 of the *Bank Mergers Act 1997* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Bank Mergers Act 1997</i>	8 of 1997	23 Jun 1997	23 Jun 1997 (see s. 2)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 61	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
Reprint 1: The <i>Bank Mergers Act 1997</i> as at 20 Feb 2004 (includes amendments listed above)			

- ² The power to make a regulation or order under this Act has expired under s. 21 of this Act.