

BANK MERGER (BANKSA AND ADVANCE BANK) BILL 1996

EXPLANATORY NOTES

Introductory Note

In June 1995, the South Australian Government reached an agreement to sell the Bank of South Australia Limited (“BankSA”) to Advance Bank Australia Limited (“Advance Bank”). The sale completed the corporatisation of the former State Bank of South Australia.

BankSA is required under Reserve Bank regulations to surrender its banking licence. It is thus necessary to transfer BankSA’s undertakings to Advance Bank.

Further, since Commonwealth legislation is not being passed, inconsistencies between this Bill and various Commonwealth Acts such as the *Privacy Act* and the *Cheques Act* may arise. The Act is to be gazetted for the purposes of section 38A of the *Banking Act 1959* in order to remove any possible inconsistencies between this Bill and such existing Commonwealth legislation. It is envisaged that gazettal will take place after passing and before commencement of the Bill.

The aim of these notes is to explain the operation of the legislation.

Policy objectives of the Bill

To provide for the transfer of the undertaking of BankSA to Advance Bank by:

- providing for the transfer of assets and liabilities in Queensland from BankSA to Advance Bank, without the usual written documents;
- providing for certain exemptions from Queensland State taxes and charges (including stamp duty and debits tax), conditional upon agreement to, and payment of, a lump sum in lieu of such taxes and charges, the amount of which will be determined by the Governor in Council, on the advice of the Treasurer; and

- requiring the Queensland Registrar of Titles and other relevant authorities to register certain transactions on written application by Advance Bank.

In addition, the legislation creates certain safeguards for third parties who are affected by the merger. This is desirable in ensuring no person suffers loss or damage as a result of the merger.

The way these policy objectives will be achieved by the Bill and why this way of achieving the policy objectives is reasonable and appropriate

The primary objective is achieved by vesting the undertaking of BankSA in Advance Bank, effectively transferring the assets and liabilities, and by allowing exemption for State taxes and charges, conditional upon the payment of a lump sum in lieu of such charges. A legislative approach such as this overcomes the need to identify, transfer ownership and pay duty on the conveyance of individual assets and liabilities.

Protection for third parties is achieved by transferring employment and employee entitlements to Advance Bank, removing the obligation of third parties to enquire as to the title of assets and liabilities, continuing customer relationships with Advance Bank, continuing legal proceedings by or against Advance Bank and providing for transitional administrative arrangements. Legislating in these areas establishes clear guidelines as to the rights and obligations of the merged entity.

Alternative way of achieving the policy objective

The alternative method to transfer the banking business of BankSA to Advance Bank is to identify and transfer individual assets and liabilities by conveyance, and for Advance Bank to pay stamp duty on each individual transfer. In these circumstances, assistance would not be provided to the merging banks and the benefit of protection for third parties would be forgone.

Administrative costs for Government implementation of this Bill

The administrative costs arising from this Bill are insignificant and able to be met from current appropriations.

Consistency with fundamental legislative principles

Care has been taken in drafting this Bill to ensure that no aspects of the Bill infringe upon fundamental legislative principles.

Consultation

Consultation has been undertaken with the Treasury Department (Office of State Revenue), Justice Department (Office of Consumer Affairs), the Department of Natural Resources (Titles Office) and the Department of Premier and Cabinet (Office of Parliamentary Counsel). BankSA also has been consulted extensively during formulation of the Bill.

PART 1—PRELIMINARY

Clause 1 specifies the short title.

Clause 2 provides that the Act commences on the commencement of the South Australian Act. Retrospectivity is precluded from occurring by providing that the Act will commence on assent, if the South Australian Act commences before assent.

Clause 3 defines words and expressions used in the Act.

Clause 4 provides that the Act will bind the Crown.

PART 2—VESTING OF BSAL's UNDERTAKING IN ABAL

Clause 5 provides for the undertaking of BankSA to be transferred to, and vested in, Advance Bank on the appointed day, which is a day to be set by proclamation under the South Australian Act.

Clause 6 provides, in relation to transferred assets and liabilities:

- (a) references to BankSA, a BankSA branch and BankSA staff, are to be interpreted as references to Advance Bank, the

- corresponding Advance Bank branch and the corresponding Advance Bank staff; and
- (b) the relationship between a customer and BankSA that existed immediately before the transfer is continued between the customer and Advance Bank after the transfer; and
 - (c) instructions, orders, mandates, authorities or notices given to BankSA before transfer are taken as having been given to Advance Bank; and
 - (d) security held by BankSA is transferred to Advance Bank and Advance Bank has the same rights and obligations as BankSA would have had if the transfer had not taken place. In addition, Advance Bank is entitled to use that security to fulfil any obligations arising after the transfer;
 - (e) Advance Bank is entitled to possession of all documents relating solely to transferred assets and liabilities, and is entitled to access and copy documents which relate only partly to transferred assets and liabilities; and
 - (f) Advance Bank is liable for payment on certain instruments carried out by BankSA as if those instruments had been carried out by Advance Bank; and
 - (g) cheques drawn on BankSA accounts which have been transferred, are taken to be drawn on the corresponding account at Advance Bank; and
 - (h) credit and debit cards issued by BankSA on accounts which have been transferred under the Act, are taken to have been issued by Advance Bank and to be the property of Advance Bank; and
 - (i) Advance Bank is entitled to possession and use of property acquired under lease agreements without exposing BankSA to liability for breach of conditions restricting such behaviour; and
 - (j) Advance Bank is able to ratify contracts or agreements in the same manner as BankSA could have if the transfer had not occurred; and
 - (k) legal proceedings commenced by or against BankSA are to be continued by or against Advance Bank. Advance Bank is subject to the same rights and liabilities that BankSA would have been

subject to if the transfer had not taken place. Documents which could have been used as evidence by or against BankSA may be used in the same manner by or against Advance Bank; and

- (l) Advance Bank may carry out transactions on transferred assets and liabilities in its own name, BankSA's name or the name of any predecessor in title to BankSA.

Clause 7 provides that an instruction, order, mandate, authority or notice for payment to be made to a BankSA account which has been transferred under this Act, is to be construed as an instruction, order or mandate for payment to be made to the corresponding Advance Bank account.

Clause 8 provides that the registrar of titles or any other person required to register transfers, may, without formal application, note a transfer under this Act. Where a written application has been lodged by Advance Bank, the registrar of titles must note those transfers requested by Advance Bank, provided that the appropriate fee is paid. If a transaction is carried out by Advance Bank, and that transaction normally would be required to be registered, but the proprietor of that asset currently is registered as BankSA or a predecessor in title to BankSA, then the transaction must be registered even though Advance Bank is not the registered proprietor.

Clause 9 removes the obligation of persons dealing with either bank to enquire as to whether assets and liabilities are, or are not, transferred. Further, a transaction will not be invalid merely because the particular bank was not entitled to deal with that asset or liability due to the fact that it was, or was not, transferred. However, this clause is not applicable where the person has committed a fraud or was aware that the bank was not entitled to transact in relation to that asset or liability.

PART 3—STAFF

Clause 10 provides the CEO may transfer all staff, by an order in writing, within 12 months of the appointed day. Such employees cease to be employed by BankSA and commence employment with Advance Bank. However the rights, terms of employment and accrued entitlements of such employees are not affected. The status and position of employees is

protected. Any liability of BankSA relating to employee entitlements is transferred to Advance Bank upon the transfer of employment.

Clause 11 excludes directors, secretaries and auditors from a transfer of employment carried out under clause 10.

PART 4—MISCELLANEOUS

Clause 12 provides exemption from Queensland State taxes and charges payable in relation to the transfer of assets and liabilities from BankSA to Advance Bank, subject to payment by Advance Bank to the Treasurer of an amount in lieu of all such State taxes and charges. Payment of the sum is to be notified by gazette notice. By virtue of the definition of State tax, the exemption does not extend to fees charged for recording or registering a transfer of ownership.

Clause 13 allows the CEO to issue a certificate specifying whether certain assets and liabilities are, or are not, transferred. Certificates must be accepted as evidence of the matter certified. This clause also provides that the transfer does not affect the evidentiary value of banking records.

Clause 14 provides that any action taken under the Act does not constitute a breach of a contract, an Act or any other law. Further, nothing done under the Act constitutes a breach of duty of confidence, constitutes a civil or criminal wrong, allows a party to terminate an agreement or obligation or releases a surety or other obligee from an obligation.

Clause 15 authorises Advance Bank to carry on business under any of the following names:

- (a) its own name;
- (b) Bank of South Australia;
- (c) BankSA;
- (d) any other name registered under the *Business Names Act 1962*.

Clause 16 provides that the Governor in Council may make regulations.

Clause 17 provides that a copy of the schedule to the South Australian Act is attached, however, that schedule does not form part of this Act.

Clause 18 provides that section 20A of the *Acts Interpretation Act 1954* applies to this Act. This provides for the continuation of effectiveness of the Act after its expiry.

Clause 19 provides for the Act to expire in 20 years. This provides a reasonable period during which the Act remains on the statute books and is accessible by Advance Bank should a need arise wherein a defence needs to be mounted against such charges as, for example, the effect of the Act having contravened a provision of another law.