

ADVANCE BANK INTEGRATION BILL 1997

EXPLANATORY NOTES

Introductory Note

On 29 January 1997, St George Bank Limited (“SGB”) became the legal owner of all of the ordinary share capital of Advance Bank Australia Limited (“ABAL”). As a result, ABAL is required under Reserve Bank regulations to surrender its banking licence and it is therefore necessary to transfer the undertaking of ABAL to SGB.

SGB has requested assistance from the States and Territories to pass complementary legislation to facilitate the merger of SGB and ABAL. The merger is to take effect under the *Bank Mergers (Advance Bank) Regulation 1997* (NSW) made pursuant to the *Bank Mergers Act 1996* (NSW).

Policy objectives of the Bill and the reasons for those objectives

The primary policy objective of the Bill is to assist SGB and ABAL in the transfer of ABAL’s undertaking to SGB by supporting the transfer under the New South Wales legislation of ABAL’s Queensland assets and liabilities to SGB.

The main reasons in support of the policy objective include:

- the legislation will overcome the need for SGB and ABAL to identify and transfer numerous individual assets and liabilities;
- the legislation will facilitate continuity in customer relationships;
- the legislation will provide protection for persons dealing with

either bank in relation to the transferred assets and liabilities; and

- the legislation will establish clear guidelines in the above areas as to the rights and obligations of the acquiring entity.

A further reason in support of the Bill is that the assistance to be provided is similar to that provided for bank mergers and acquisitions in the past, as demonstrated recently by the *Bank of New Zealand (Transfer of Undertaking) Act 1997*, the *Challenge Bank (Transfer of Undertaking) Act 1996* and the *Bank Merger (Bank SA and Advance Bank) Act 1996*.

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

The primary policy objective is achieved by recognising the vesting of the undertaking of ABAL in SGB under the *Bank Mergers (Advance Bank) Regulation 1997* (NSW) and by exempting the transfer from stamp duty, conditional upon the payment by SGB to the Consolidated Fund, of a lump sum in lieu of such stamp duty. The amount of the payment in lieu is to be determined by the Governor in Council.

This legislative approach is considered to be reasonable and appropriate because it facilitates the transfer of ABAL's undertaking, but overcomes the burden of having to identify, transfer and pay conveyance stamp duty on individual assets and liabilities. Also, the payment of the lump sum in lieu of individual stamp duty payments is considered reasonable as the amount is intended to equate the duty which would otherwise be payable and will be determined in consultation with the Office of State Revenue and SGB.

Continuity in customer relationships and protection of third parties is achieved by deeming relationships between ABAL and each ABAL customer to be between SGB and the customer and by preserving the rights and duties under those relationships. Further, all instruments relevant to ABAL are deemed to be between SGB and the customer or the third party and the rights and duties under those instruments are preserved.

Alternative manner of achieving the policy objective

It is considered that there is no practicable legislative alternative to achieve the policy objective of assisting SGB and ABAL in the transfer of

the undertaking of ABAL.

The non-legislative alternative would be to identify and transfer individual assets and liabilities on an item by item basis, and for SGB to pay stamp duty on each individual transfer. Such a process would involve substantial administrative effort both for the parties and the relevant Government agencies. Additionally, the benefit of protection for third parties would be forgone. For these reasons the legislative alternative has been adopted.

Administrative costs for Government implementation of this Bill

The administrative costs arising from this Bill are insignificant and are able to be met from current appropriations. The avoidance of the need to stamp individual transfers will avoid administrative costs which otherwise would be imposed on the relevant Government agencies.

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 taken place with Treasury Department (Office of State Revenue), Treasury Department (National Competition Policy Unit), Justice Department (Office of Consumer Affairs), Department of Natural Resources (Titles Office), the Ministerial Council for Corporations and the Queensland Office of Parliamentary Counsel. SGB has also been consulted extensively during formulation of the Bill. Consultation has revealed no objections to the Bill.

Purpose and Intended operation of each clause of the Bill

PART 1—PRELIMINARY

Clause 1 specifies the short title.

Clause 2 provides for the commencement of sections 3 and 10 upon assent and the remainder of the Act on the succession day provided for under the *Bank Mergers (Advance Bank) Regulation 1997* (NSW). If on the succession day, the gazette notice mentioned in section 10(4) has not been published, the remainder of the Act commences on the day the gazette notice is published.

Clause 3 defines words and expressions used in the Act.

Clause 4 provides that the Act binds the State and, as far as permitted, the Commonwealth and the other States.

PART 2—REORGANISATION

Clause 5 recognises that pursuant to the *Bank Mergers (Advance Bank) Regulation 1997* (NSW) made under the *Bank Mergers Act 1996* (NSW), SGB will become the successor in law of ABAL on the succession day and ABAL will be dissolved on that day. The clause makes it clear that SGB is the universal successor of ABAL for all purposes. A number of transitional provisions are included.

Clause 6 recognises that pursuant to the *Bank Mergers (Advance Bank) Regulation 1997* (NSW) the relationship between ABAL and each of its customers becomes, upon commencement of the Act, a relationship between SGB and those customers.

Clause 7 recognises that pursuant to the *Bank Mergers (Advance Bank) Regulation 1997* (NSW) each authority, instruction, mandate or order, given to ABAL by an ABAL customer and subsisting on, or given after, commencement of the Act is, until cancelled, taken to have been given to SGB. This provision supports clause 6 in achieving continuity of customer relationships.

Clause 8 recognises pursuant to the *Bank Mergers (Advance Bank) Regulation 1997* (NSW) the securities held by ABAL immediately before commencement of the Act, as security for payment of debts or liabilities of a person, are transferred to SGB. However, the clause provides that the

security is not security for any debts or liability of the person to SGB existing immediately before commencement. If the security extends to future liabilities, it is available to SGB as security for future liabilities of the person to SGB. The latter two provisions are subject to any agreement between SGB and the person.

Clause 9 authorises SGB to carry on business in Queensland under the following names:

- Advance Bank Australia;
- Bank of South Australia;
- BankSA;
- Any other name registered by SGB under the *Business Names Act 1962*.

This clause also provides that for a period of six months from the succession day, SGB is authorised to carry on business in Queensland under the following names:

- Advance Bank Australia Limited; and
- BankSA a Division of Advance Bank Australia Limited.

PART 3—MISCELLANEOUS

Clause 10 provides for the exemption from Queensland stamp duty payable in relation to the transfer of assets and liabilities from ABAL to SGB, subject to the payment by SGB to the Consolidated Fund of an amount in lieu of the duty. The amount is to be determined by the Governor in Council and is intended to approximate the duty which would otherwise be payable. Payment of the sum is to be notified by gazette notice.

Clause 11 provides that the chief executive officer of SGB may certify a matter in relation to the operation or effect of the Act. For all courts, tribunals and proceedings a certificate under this clause is evidence of the matter certified. A document purporting to be a certificate under this clause is to be taken to be a certificate and to have been properly given unless the

contrary is established.

Clause 12 requires any person or authority who has statutory responsibility for registering or recording transactions affecting assets or liabilities, on application by SGB and payment of the appropriate fee, to register or record the transfer of an asset or liability under the Act. Also, the registering authority may, without formal application, register the transfer.

Clause 13 provides that the operation of the Act has effect despite anything in any contract, deed, undertaking, agreement or any other instrument. Nothing done or allowed under the Act will constitute a civil wrong, a breach of contract, duty of confidence or an Act or other law, or allow a party to terminate an agreement or release a surety. Any advice or consent of any person necessary to carry out any action authorised by the Act, is taken to have been given.

Clause 14 provides that section 20A of the *Acts Interpretation Act 1954* applies to this Act. This provides for the continuation of the effectiveness of the Act after its expiry.

Clause 15 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 SGB should the need arise.