

Queensland



**BANK MERGER (BANKSA  
AND ADVANCE BANK) ACT  
1996**

**Act No. 45 of 1996**



# Queensland



## BANK MERGER (BANKSA AND ADVANCE BANK) ACT 1996

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**SCHEDULE OF SOUTH AUSTRALIAN ACT**

Queensland



**Bank Merger (BankSA and Advance Bank)  
Act 1996**

**Act No. 45 of 1996**

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**An Act to provide for the merger of the Bank of South Australia  
Limited with Advance Bank Australia Limited and for related  
purposes**

*[Assented to 15 November 1996]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Bank Merger (BankSA and Advance Bank) Act 1996*.

### **Commencement**

**2.(1)** This Act, other than sections 3 and 12,<sup>1</sup> commences on the commencement of the South Australian Act.

**(2)** Despite subsection (1), if the South Australian Act commences before the date of assent of this Act, this Act commences on the date of assent.

**(3)** However, if at the time this Act would otherwise commence under subsection (1) or (2) the gazette notice mentioned in section 12(4) has not been published in the gazette, this Act, other than sections 3 and 12, commences on the day the notice is published in the gazette.

**(4)** Sections 3 and 12 commence on the date of assent of this Act.

**(5)** The *Acts Interpretation Act 1954*, section 15DA,<sup>2</sup> does not apply to this Act.

### **Definitions**

**3.** In this Act—

“**ABAL**” means Advance Bank Australia Limited (A.C.N. 002 953 335).

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<sup>1</sup> Section 3 (Definitions)  
Section 12 (State taxes)

<sup>2</sup> The *Acts Interpretation Act 1954*, section 15DA, provides for the automatic commencement of certain Acts 1 year after they are assented to.

**“ABAL subsidiary”** means a body corporate that is a subsidiary of ABAL for the *Corporations Law*, section 46.<sup>3</sup>

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

**“asset”** includes—

- (a) a present, contingent or future right, power or privilege or immunity (including a present or future cause of action in favour of BSAL); and
- (b) an asset (as defined above) held in a fiduciary capacity.

**“BSAL”** means the Bank of South Australia Limited (A.C.N. 063 369 488).

**“cause of action”** includes a right to bring, defend or participate in legal proceedings.

**“CEO”** means the chief executive officer of ABAL or a delegate of the chief executive officer.

**“employee”** includes officer.

**“excluded asset”** means—

- (a) an asset classified as an excluded asset in the schedule of the South Australian Act;<sup>4</sup> or
- (b) an asset related to an excluded liability.

**“excluded liability”** means—

- (a) a liability classified as an excluded liability in the schedule of the South Australian Act;<sup>5</sup> or
- (b) a liability related to an excluded asset.

**“guarantee”** includes an indemnity.

**“instrument”** includes—

- (a) a legislative instrument; and

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<sup>3</sup> Corporations Law, section 46 (What is a subsidiary)

<sup>4</sup> Under section 17, a copy of the schedule is attached to this Act

<sup>5</sup> Under section 17, a copy of the schedule is attached to this Act

(b) a judgment, order or process of a court.

**“legal proceedings”** includes an arbitration or an administrative proceeding.

**“liability”** includes—

- (a) a present, future or contingent liability (arising at law or in equity); and
- (b) a duty or non-pecuniary obligation; and
- (c) in relation to BSAL—a present or future cause of action against BSAL.

**“security”** means—

- (a) a mortgage or charge; or
- (b) a guarantee; or
- (c) another instrument acknowledging, evidencing, recording, imposing or securing a liability for the payment of money or the discharge of a liability.

**“South Australian Act”** means the *Bank Merger (BankSA and Advance Bank) Act 1996 (SA)*.

**“State tax”** means a fee, duty or charge imposed under an Act but does not include a fee or charge imposed for registering or recording the transfer of an asset or liability under this Act.

**“transferred asset”** means an asset transferred to ABAL under this Act.

**“transferred employee”** means an employee of BSAL who becomes an employee of the ABAL or an ABAL subsidiary under this Act.

**“transferred liability”** means a liability transferred to ABAL under this Act.

**“undertaking”** of BSAL means—

- (a) all assets of BSAL except excluded assets; and
- (b) all liabilities of BSAL except excluded liabilities.

**Act binds the Crown**

4. This Act binds the Crown.

**PART 2—VESTING OF BSAL’S UNDERTAKING IN ABAL****Vesting of undertaking**

5.(1) On the appointed day, BSAL’s undertaking is transferred to, and vested in, ABAL.

(2) The transfer of assets and liabilities under this section has effect despite the provisions of any other law or instrument.

(3) The transfer of a liability under this section discharges BSAL from the liability but subjects ABAL to it.

**Transitional provisions**

6. The following transitional provisions apply—

- (a) for construing an instrument or an oral agreement, understanding or undertaking so far as it applies to a transferred asset or transferred liability—
  - (i) a reference to BSAL is to be construed as a reference to ABAL; and
  - (ii) a reference to a branch, or agency of BSAL is to be construed as a reference to the corresponding branch, office or agency of ABAL or a branch, office or agency designated by the CEO as the corresponding branch, office or agency; and
  - (iii) a reference to an officer of BSAL is to be construed as a reference to the corresponding officer of ABAL or an officer designated by the CEO as the corresponding officer;
- (b) the relationship of banker and customer existing between BSAL

and a customer in relation to a transferred asset or transferred liability immediately before the transfer took effect continues between ABAL 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;

- (c) an instruction, order, mandate, authority or notice given to BSAL before the transfer took effect is, so far as it is referable to a transferred asset or transferred liability, taken to have been given to ABAL;
- (d) if a security held by BSAL is referable to a transferred asset or transferred liability, then, so far as it is referable to the transferred asset or transferred liability—
  - (i) ABAL becomes entitled or subject to rights, priorities and liabilities in relation to the security that BSAL would have had if there had been no transfer; and
  - (ii) the security is available to ABAL as security for the discharge of transferred liabilities including, if the security extends to future liabilities, liabilities incurred after the transfer;
- (e) ABAL is entitled to possession of all documents to which BSAL was entitled immediately before the transfer took effect that are entirely referable to a transferred asset or transferred liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or transferred liability and another asset or liability that is not transferred;
- (f) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by BSAL, is (if BSAL's liability under the instrument or order is a transferred liability) payable by ABAL in the same way as if it had been drawn by or on, or accepted or endorsed by, ABAL;
- (g) a cheque drawn on an account transferred to ABAL is, although expressed to be drawn on the account formerly at BSAL, taken to have been drawn on the account at ABAL;
- (h) if an account in respect of which a credit or debit card was issued

by BSAL is transferred, the card is taken to have been issued by ABAL and to be the property of ABAL;

- (i) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement, ABAL may exercise those rights without exposing BSAL to liability 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;
- (j) ABAL has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from BSAL as BSAL would have had if there had been no transfer;
- (k) if, at the appointed day, legal proceedings had been started by or against BSAL or were continuing by or against BSAL because of a transfer of an interest to BSAL or BSAL's assumption of responsibility for conducting or defending the proceedings—
  - (i) the proceedings must (subject to discontinuance) be continued and completed by or against ABAL; and
  - (ii) ABAL will have the same rights and privileges as BSAL would have had if there had been no transfer; and
  - (iii) a document that could have been given in evidence by or against BSAL if there had been no transfer may be given in evidence by or against ABAL;
- (l) ABAL may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or transferred liability in its own name, in BSAL's name, or if the asset or liability is held in the name of a predecessor in title to BSAL, in the name of the predecessor in title.

### **Direct payment orders to accounts transferred to BSAL**

7. An instruction, order, mandate, authority or notice for payments to be made to an account at BSAL is, if the account at BSAL is transferred to ABAL under this Act, taken to be an instruction, order, mandate, authority or notice for the payments to be made to the account at ABAL.

**Registration of title, etc.**

**8.(1)** The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities—

- (a) may (without formal application) register or record in the appropriate way the transfer of an asset or liability under this Act; and
- (b) must, on written application by ABAL, register or record in the appropriate way the transfer of an asset or liability under this Act.

**(2)** A transaction related to a transferred asset or transferred liability entered into by ABAL in BSAL's name or the name of a predecessor in title to BSAL, if effected by an instrument otherwise in registrable form, must be registered even though ABAL has not been registered as proprietor of the asset.

**(3)** The registrar of titles or other person is not required to act under subsection (1)(b) or (2) unless the appropriate fee or charge relating to the act has been paid to the registrar or person.

**Exclusion of obligation to inquire**

**9.(1)** A person dealing with ABAL is not obliged to inquire whether an asset to which the transaction relates is or is not a transferred asset.

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

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

**(4)** However, this section does not validate a transaction if the party dealing with BSAL or ABAL has actual notice of the deficiency of title, or acts fraudulently.

## **PART 3—STAFF**

### **Transfer of staff**

**10.(1)** The CEO may, by order in writing, transfer employees of BSAL to positions in the employment of ABAL or an ABAL subsidiary.

**(2)** An order under this section—

- (a) must relate to all employees employed by BSAL at the date of the order; and
- (b) must be made within 12 months after the appointed day.

**(3)** An employee to whom an order under this section relates ceases to be an employee of BSAL and becomes, in accordance with the order, an employee of ABAL or an ABAL subsidiary.

**(4)** A transfer under this section does not—

- (a) affect the employee's remuneration; or
- (b) interrupt continuity of service; or
- (c) constitute a retrenchment or redundancy; or
- (d) affect terms of employment; or
- (e) affect rights accrued at the date of the transfer in respect of employment, including the superannuation rights of the employee; or
- (f) give rise to a superannuation entitlement or another entitlement or remedy for cessation or change of employment.

**(5)** A transfer under this section must not involve—

- (a) a reduction in the employee's status; or
- (b) a change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience; or
- (c) a change in the employee's place of employment unless—
  - (i) the change is in accordance with existing terms of employment; or
  - (ii) the new place of employment is within reasonable

commuting distance from the employee's former place of employment.

(6) However—

- (a) if the general nature of an employee's responsibility after the transfer remains the same as, or similar to, the employee's responsibility before the transfer—the employee's status is not reduced by—
  - (i) a reduction in the scope of business operations for which the employee is responsible; or
  - (ii) a reduction in the number of employees under the employee's supervision or management; and
- (b) the transfer of an employee under this section does not affect a power to vary terms of employment.

(7) On the transfer of an employee to the employment of a new employer under this section, all existing and accruing liabilities related to the employee's employment are transferred to the new employer.

### **Directors, secretaries and auditors**

**11.** A director, secretary or auditor of BSAL does not become a director, secretary or auditor of ABAL as a result of a transfer of employment under this part.

## **PART 4—MISCELLANEOUS**

### **State taxes**

**12.(1)** No State tax is payable under a law of the State in respect of—

- (a) a transfer of assets or liabilities under this Act; or
- (b) an application or entry made, receipt given, or anything else done for acknowledging, evidencing or giving effect to a transfer of assets or liabilities under this Act.

(2) No obligation arises under an Act for the assessment or imposition of State tax—

- (a) to lodge a statement or return relating to a transfer of assets or liabilities under this Act; or
- (b) to include information about the transfer in a statement or return.

(3) This section applies only if the amount fixed by the Governor in Council is paid to the consolidated fund by ABAL or BSAL.

(4) As soon as practicable after the amount is paid, the Minister must notify that fact by gazette notice.

### **Evidence**

**13.(1)** The CEO may issue a certificate certifying that stated assets or liabilities are, or are not, transferred assets or transferred liabilities.

(2) A certificate under subsection (1) must be accepted in legal proceedings and by an administrative official as evidence of the matter certified.

(3) An apparently genuine document purporting to be a certificate under subsection (1) is, unless the contrary is established, taken to be the certificate.

(4) The transfer of BSAL's undertaking to ABAL does not affect the character that records made by BSAL or a bank from which BSAL acquired the records may have as banking records for the purposes of the law of evidence.

### **Effect of things done or allowed under Act**

**14.** 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 another way); or
- (d) constitutes a civil or criminal wrong; or

- (e) terminates an agreement or obligation or fulfils a condition that allows a person to terminate an agreement or obligation, or gives rise to another right or remedy; or
- (f) releases a surety or other obligee wholly or in part from an obligation.

### **Name in which ABAL carries on business**

**15.(1)** ABAL may carry on business in the State under any of the following names—

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

**(2)** Bank of South Australia and BankSA must, on application by ABAL, be registered as business names under the *Business Names Act 1962*.

### **Regulation-making power**

**16.** The Governor in Council may make regulations under this Act.

### **Attachment—schedule of South Australian Act**

**17.(1)** Attached to this Act is a copy of the schedule of the South Australian Act.

**(2)** The attachment does not form part of this Act.

### **Application of Acts Interpretation Act 1954, s 20A**

**18.** This Act is an Act to which the *Acts Interpretation Act 1954*, section 20A applies.

**Expiry of Act**

**19.** This Act expires 20 years after it commences.

**ATTACHMENT TO BANK MERGER (BANKSA AND  
ADVANCE BANK) ACT 1996**

section 17

**SCHEDULE OF SOUTH AUSTRALIAN ACT***Excluded Assets and Liabilities*

The following are classified as excluded assets or liabilities (as the case requires)—

- (a) BSAL's rights and liabilities under leasing and finance plan types 43, 49, 50, 51, 52, 53, 54 and 56 and under managed plan types 55 and 57;
- (b) BSAL's liabilities under its issued shares;
- (c) the shares in BSAL Financial Services Limited owned by BSAL;
- (d) all rights and liabilities in relation to BSAL's employees;
- (e) cash equal to the BSAL's retained earnings as at the appointed day.