

SOUTH AUSTRALIA

BANK MERGERS (SOUTH AUSTRALIA) ACT 1997

SUMMARY OF PROVISIONS

1. Short title
2. Interpretation
3. Regulations for the merging of banks
4. Application of merger laws of other jurisdictions
5. Extra-territorial operation of regulations

BANK MERGERS (SOUTH AUSTRALIA) ACT 1997

being

Bank Mergers (South Australia) Act 1997 No. 39 of 1997
[Assented to 17 July 1997]

An Act to facilitate the merger of banks; and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Bank Mergers (South Australia) Act 1997*.

Interpretation

2. In this Act—

"**asset**" includes—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property;
- (b) a present, contingent or future right, power or privilege or immunity (including a present or future cause of action);
- (c) an asset (as defined above) held in a fiduciary capacity;

"**bank**" means—

- (a) a bank as defined by section 5 of the *Banking Act 1959* (Cwth); or
- (b) a bank established by a law of the State relating to State banking,

and includes a body corporate that is a wholly owned subsidiary of a bank (as defined above);

"**cause of action**" includes any right to bring, defend or participate in legal proceedings;

"**document**" includes a disc, tape or other medium in which information is stored;

"**legal proceedings**" includes an arbitration or an administrative proceeding;

"**liability**" includes—

- (a) a present, contingent or future liability arising at law or in equity (including a liability to a present or future cause of action);
- (b) a duty or non-pecuniary obligation;

"**merger**" includes—

- (a) the transfer of the whole or part of the undertaking of one bank to another; or
- (b) the succession of one bank to the rights and liabilities of another; or
- (c) any other transaction under which the undertakings or legal personalities of two or more banks are amalgamated or merged;

"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 performance of a duty or non-pecuniary obligation.

Regulations for the merging of banks

3. (1) The Governor may make regulations for or relating to the merger of two or more banks.

(2) Without limiting subsection (1), the regulations may make provision for or with respect to—

- (a) giving effect to the merger;
- (b) the liquidation or dissolution of a bank being merged with another bank;
- (c) the obligations of the banks in relation to the merger and related transactions;
- (d) the effect of the merger on existing contracts, agreements (oral or written), deeds, leases, licences, negotiable instruments, payment orders and other instruments and other undertakings of a bank affected by the merger;
- (e) the relationship between a bank affected by the merger and customers or depositors;
- (f) the effect of the merger on custody or bailment of documents, goods or things held by the banks affected by the merger;
- (g) the effect of the merger on existing securities of a bank affected by the merger;
- (h) the effect of the merger on instructions, orders or mandates for payments to be made to an account at a bank affected by the merger;
- (i) the effect of the merger on the employment, superannuation and related rights of staff of a bank affected by the merger (and, if superannuation rights are of statutory origin, provide that statutory provisions operate with prescribed modifications in relation to the relevant members of staff);
- (j) the use of business names (and any consequential modification of state law);
- (k) the effect of the merger on existing or pending legal proceedings and evidence in existing or future legal proceedings, and on legal rights, privileges and obligations;
- (l) the effect of the merger on the liabilities of the banks;
- (m) the construction of references to the banks and any other persons or bodies affected by the merger;
- (n) service of documents on the banks;

- (o) the transfer of assets or liabilities between banks affected by the merger and the registration or recording of the transfer, without formal application, by the Registrar-General or any other person or authority;
 - (p) the identification of assets or liabilities of a bank affected by the merger;
 - (q) the exclusion of constructive notice or any obligation to inquire in relation to transferred assets or liabilities;
 - (r) evidence of matters related to the merger;
 - (s) relief from the consequences of anything done or allowed under the regulations;
 - (t) payment, or exemption from payment, of duties, taxes, charges, rates or other imposts on conditions determined by the Treasurer (which may include conditions requiring payment of an amount fixed by the Treasurer in lieu of such duties, taxes, charges, rates or other imposts);
 - (u) other provisions of a savings or transitional nature consequent on the merger.
- (3) A regulation made for the purposes of subsection (2)(a)—
- (a) may provide that the banks are merged into a single legal entity;
 - (b) may confer discretionary powers for determining the conditions on which assets or liabilities are to be transferred or for excluding particular assets or liabilities or assets or liabilities of a particular class from the transfer.

(4) A regulation made for the purposes of subsection (2)(b) may only be made with the approval of the Minister administering the *Corporations Law*.

(5) A regulation made for the purposes of subsection (2)(g) may deal with compliance or exemption from compliance with statutory requirements related to the registration of securities.

(6) The regulations may continue in effect (with necessary modifications) statutory guarantees relating to liabilities affected by the merger and may, at the time of the merger or subsequently, exclude or modify them.

(7) The regulations have effect despite the *Real Property Act 1886* or any other law.

Application of merger laws of other jurisdictions

4. (1) Regulations made for the purposes of this Act may apply a law of another State or Territory providing for or relating to the merger of banks (a **declared law**) as a law of this State subject to any modifications specified in the regulations.

(2) However, 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 regulations include them (and subject to any modifications specified in the regulations).

(3) A regulation may be made in respect of a law of another State or Territory whether or not that law has commenced in that State or Territory.

(4) If a regulation so provides, a declared law continues to operate in this State despite its amendment, disallowance or repeal in the State or Territory in which it was enacted or otherwise made.

Extra-territorial operation of regulations

5. Subject to any specified limitations—

- (a) regulations made for the purposes of this Act apply both within and outside the State; and
- (b) the regulations apply outside the State to the full extent of the extra-territorial legislative power of the State.