

SOUTH AUSTRALIA

FINANCIAL SECTOR (TRANSFER OF BUSINESS) ACT 1999

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Interpretation
4. Voluntary transfers
5. Compulsory transfers
6. Certificates evidencing operation of Act
7. Registration or record of transfer
8. State duties and taxes
9. Relationship of Act with other laws
10. Regulations

FINANCIAL SECTOR (TRANSFER OF BUSINESS) ACT 1999

being

Financial Sector (Transfer of Business) Act 1999 No. 32 of 1999
[Assented to 17 June 1999]¹

¹ Came into operation 1 July 1999: being the date specified under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act: s. 2.

An Act to provide for transfers of business between authorised deposit-taking institutions and between life insurance companies; and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Financial Sector (Transfer of Business) Act 1999*.

Commencement

2. This Act will come into operation on the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

Interpretation

3. (1) In this Act—

"APRA" means the Australian Prudential Regulation Authority;

"authorised APRA officer" means a person authorised under section 6 to issue certificates under that section;

"Commonwealth Act" means the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth, as amended from time to time.

(3) If an expression is defined in the Commonwealth Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.

Voluntary transfers

4. (1) The purpose of this section is to facilitate voluntary transfers of business under Part 3 of the Commonwealth Act for regulated bodies.

(2) This section applies when a certificate of transfer issued under section 18 of the Commonwealth Act comes into force under Division 3 of Part 3 of that Act.

(3) The receiving body is taken to be the successor in law of the transferring body, to the extent of the transfer.

- (4) In particular—

(a) if the transfer is a total transfer, all the assets and liabilities of the transferring body become respectively the assets and liabilities of the receiving body without any transfer, conveyance or assignment; and

(b) if the transfer is a partial transfer, all the assets and liabilities of the transferring body included in the list of assets and liabilities specified in the statement of detail become respectively assets and liabilities of the receiving body without any transfer, conveyance or assignment; and

(c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.

- (5) If there is an approved section 20 statement in relation to the transfer—
- (a) that specifies that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with the statement; or
 - (b) that specifies a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

Compulsory transfers

5. (1) The purpose of this section is to facilitate compulsory transfers of business under Part 4 of the Commonwealth Act for regulated bodies.

(2) This section applies when a certificate of transfer issued under section 33 of the Commonwealth Act comes into force under Division 3 of Part 4 of that Act.

(3) The receiving body is taken to be the successor in law of the transferring body, to the extent of the transfer.

(4) In particular—

- (a) if the transfer is a total transfer, all the assets and liabilities of the transferring body become respectively the assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
- (b) if the transfer is a partial transfer, all the assets and liabilities of the transferring body that are included in the list (referred to in section 33(2)(c) of the Commonwealth Act) included in, or attached to, the certificate of transfer become respectively assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
- (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.

(5) If the certificate of transfer includes provisions of a kind referred to in section 33(3) of the Commonwealth Act—

- (a) specifying that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with those provisions; or
- (b) specifying a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

(6) If there is an approved section 30 statement in relation to the transfer—

- (a) that specifies that particular things are to happen or are taken to be the case, those things are taken to happen, or to be the case, in accordance with the statement; or
- (b) that specifies a mechanism for determining things that are to happen or are taken to be the case, things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

Certificates evidencing operation of Act

6. (1) An authorised APRA officer may, by a certificate in writing signed by the officer, certify anything in relation to the effect of this Act and, in particular, may certify that—

- (a) a particular asset of a transferring body has become a transferred asset of a receiving body; or
- (b) a particular liability of a transferring body has become a transferred liability of a receiving body.

(2) For all purposes and in all proceedings, a certificate purporting to be issued under subsection (1) is evidence of the matters certified.

(3) APRA is empowered to authorise, in writing, an APRA board member or an APRA staff member to issue certificates under this section.

Registration or record of transfer

7. The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this section accompanied by a certificate issued under section 6, register or record in an appropriate manner the transfer or transfers to which the certificate relates.

State duties and taxes

8. (1) No stamp duty or other duty or tax is chargeable under any Act in respect of anything effected by or done under this Act.

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

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

(3) However, a receiving body in a voluntary transfer of business must pay to the Treasurer an amount determined by the Treasurer on the basis of an estimate of the duties and taxes that would, but for this section, be payable under the law of this State in respect of the relevant transfer of assets.

(4) The Treasurer must give the receiving body written notice of the determination.

(5) The amount must be paid as required by the Treasurer in the notice of determination.

Relationship of Act with other laws

9. (1) This Act has effect despite anything in a contract, deed, undertaking, agreement or other instrument.

(2) Nothing done by or under this Act—

- (a) places a receiving body, a transferring body or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or

-
- (b) places a receiving body, a transferring body or another person in breach of—
- (i) a law of the State; or
 - (ii) a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset or liability or the disclosure of information; or
- (c) releases a surety, wholly or partly, from all or any of the surety's obligations.

(3) Without limiting subsection (1), if, apart from this section, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given.

Regulations

10. The Governor may make such regulations as are necessary or expedient for the purposes of this Act.