

South Australia

## **Bank Mergers (South Australia) (St.George/Advance) Regulations 1998**

under the *Bank Mergers (South Australia) Act 1997*

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#### **1—Short title**

These regulations may be cited as the *Bank Mergers (South Australia) (St.George/Advance) Regulations 1998*.

#### **2—Commencement**

These regulations will come into operation on the day on which they are made.

#### **3—Interpretation**

In these regulations—

**ABAL** means Advance Bank Australia Limited (ACN 002 953 335);

**ABAL subsidiary** means a body corporate that is a subsidiary of ABAL for the purposes of section 46 of the *Corporations Law*;

**CEO** of St.George means the officer having the day to day management of the affairs of St.George and includes an officer acting from time to time in that capacity;

**instrument** includes—

- (a) a legislative instrument;
- (b) a judgment, order or process of a court;
- (c) any other document;

**merger** means the merger of ABAL with St.George under the NSW regulations;

**NSW regulations** means the *Bank Mergers (Advance Bank) Regulations 1998* of New South Wales, as amended from time to time;

**scheduled provisions** mean the provisions in Schedule 2 of the *State Bank (Corporatisation) Act 1994* as amended by the *Bank Merger (BankSA and Advance Bank) Regulations 1996* (see *Gazette 28.11.1996 p1769*);

**State Scheme** means the superannuation scheme established under the *Superannuation Act 1988*;

**St.George** means St.George Bank Limited (ACN 055 513 070);

**St.George subsidiary** means a body corporate that is a subsidiary of St.George for the purposes of section 46 of the *Corporations Law*;

**succession day** means 1 April 1998;

**translated asset** means an asset that becomes an asset of St.George under the NSW regulations;

**translated liability** means a liability that becomes a liability of St.George under the NSW regulations;

**Treasurer** means the Treasurer of South Australia.

#### **4—Transitional provisions**

Without limiting the effect of the merger, the following transitional provisions apply following the merger:

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

- (c) information about a customer known or available to ABAL may be made known or available to St.George without breach of confidentiality or privacy; and
- (d) an instruction, order, mandate, authority or notice given to ABAL before the merger is, so far as it is referable to a translated asset or translated liability, taken to have been given to St.George; and
- (e) if a security held by ABAL is referable to a translated asset or translated liability, then, so far as it is referable to the translated asset or translated liability—
  - (i) St.George becomes entitled or subject to rights, priorities and liabilities in relation to the security that ABAL would have had if there had been no merger; and
  - (ii) the security is available to St.George as security for the discharge of translated liabilities including, where the security extends to future liabilities, liabilities incurred after the merger; and
- (f) St.George is entitled to possession of all documents to which ABAL was entitled immediately before the merger that are referable to a translated asset or translated liability (and the documents, or access to or copies of the documents, may be provided without breach of confidentiality or privacy); and
- (g) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by ABAL, is payable by St.George in the same way as if it had been drawn by or on, or accepted or endorsed by, St.George; and
- (h) a cheque drawn on an account vested in St.George under the merger is, although expressed to be drawn on the account formerly at ABAL, taken to have been drawn on the account at St.George; and
- (i) if an account in respect of which a credit or debit card was issued by ABAL is vested in St.George under the merger, the card is taken to have been issued by St.George and to be the property of St.George; and
- (j) if a translated asset consists of rights to the possession or use of property under a lease or other agreement, St.George may exercise those rights without exposing ABAL 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; and
- (k) St.George has the same right to ratify a contract or agreement relating to an asset or liability vested in ABAL before the merger as ABAL would have had if there had been no merger; and
- (l) if, at the succession day, legal proceedings had been commenced by or against ABAL or were continuing by or against ABAL because of a transfer of an asset or liability to ABAL or ABAL's assumption of responsibility for conducting or defending the proceedings—
  - (i) St.George is substituted for ABAL as a party to the proceedings; and
  - (ii) St.George will have the same rights and privileges as ABAL would have had if there had been no merger; and

- (iii) a document that could have been given in evidence by or against ABAL if there had been no merger may be given in evidence by or against St.George; and
- (m) St.George may execute an instrument discharging, surrendering, transferring or otherwise dealing with a translated asset or translated liability in its own name or in the name of the body corporate from which the asset or liability was transferred to St.George or, if the asset or liability is held in the name of a predecessor in title to ABAL, in the name of the predecessor in title.

## **5—Direct payment orders to accounts**

An instruction, order or mandate for payments to be made to an account at ABAL is, if the account at ABAL is vested in St.George under the merger, taken to be an instruction, order or mandate for the payments to be made to the account at St.George.

## **6—Registration of title etc**

- (1) The Registrar-General or other person required or authorised by law to register or record transactions affecting assets or liabilities or documents relating to such transactions—
  - (a) may (without formal application) register or record in the appropriate manner the vesting of a translated asset or translated liability in St.George under the merger; and
  - (b) must, on application by St.George, register or record in the appropriate manner the vesting of a translated asset or translated liability in St.George under the merger.
- (2) A transaction related to a translated asset or translated liability entered into by St.George in its own name or ABAL's name or the name of a predecessor in title to ABAL, if effected by an instrument otherwise in registrable form, must be registered even though St.George has not been registered as proprietor of the asset.

## **7—Payment of amount instead of taxes and duties**

- (1) St.George must pay \$5 million to the Treasurer (instead of all duties, taxes, charges, rates or other imposts for which St.George or ABAL would be liable under the law of the State as a result of or in connection with the merger).
- (2) If St.George pays the required amount—
  - (a) no stamp duty, financial institutions duty, or debits tax is payable under a law of the State as a result of or in connection with the merger and, in particular, no such duty or tax is payable in respect of—
    - (i) the vesting of a translated asset or translated liability in St.George; or
    - (ii) an application or entry made, receipt given, or anything else done for the purpose of acknowledging, evidencing, recording, registering, or giving effect to the vesting of a translated asset or translated liability in St.George; and
  - (b) no obligation arises under an Act for the assessment or imposition of stamp duty, financial institutions duty or debits tax—

- (i) to lodge a statement or return relating to the vesting of a translated asset or translated liability in St.George; or
  - (ii) to include information about such vesting in a statement or return.
- (3) The Treasurer must, when satisfied that the required amount has been paid, give St.George a certificate to that effect.
- (4) This regulation does not exempt St.George from the obligation to pay an amount to the Registrar-General in respect of a transaction relating to land.

## **8—Government guarantee**

The Treasurer's guarantee of liabilities under section 12 of the *Bank Merger (BankSA and Advance Bank) Act 1996* continues in effect as if references in that section to ABAL were references to St.George.

## **9—Superannuation rights of State Scheme contributors**

- (1) If, immediately before the transfer of an employee from the employment of ABAL or an ABAL subsidiary to the employment of St.George, the employee had rights under the State Scheme, those rights are unaffected by the transfer of employment.
- (2) The scheduled provisions operate with the modifications set out in the Schedule.
- (3) For the purposes of this regulation, an employee of ABAL or an ABAL subsidiary will be taken to have been transferred to a position in the employment of St.George if the employee ceased (either before or after the commencement of these regulations) to be an employee of ABAL or the subsidiary for the purpose of becoming an employee of St.George or a St.George subsidiary, whether or not rights or liabilities of ABAL or the subsidiary arising from the employee's employment were transferred to St.George or the subsidiary.

## **10—Name in which St.George carries on business**

- (1) St.George may carry on business in the State under any of the following names:
  - (a) its own name; or
  - (b) Advance Bank Australia; or
  - (c) Bank of South Australia; or
  - (d) BankSA; or
  - (e) until 1 October 1998—
    - (i) Advance Bank Australia Limited; or
    - (ii) BankSA a Division of Advance Bank Australia Limited; or
  - (f) any other name registered by St.George under the *Business Names Act 1996*.
- (2) The following names must, on the application of St.George, be registered as business names under the *Business Names Act 1996*:
  - (a) Advance Bank Australia;
  - (b) Bank of South Australia;
  - (c) BankSA.

## 11—Evidence

- (1) The CEO of St.George may issue a certificate certifying that—
  - (a) specified assets or liabilities are, or are not, translated assets or translated liabilities; or
  - (b) specified assets or liabilities are, or are not, transferred assets or transferred liabilities within the meaning of the *Bank Merger (BankSA and Advance Bank) Act 1996*.
- (2) An apparently genuine document purporting to be a certificate under subregulation (1) must be accepted in legal proceedings or by an administrative official as proof of the matter certified in the absence of proof to the contrary.
- (3) The merger does not affect the character that records made by ABAL or a bank from which ABAL acquired the records may have as banking records for the purposes of the law of evidence.

## 12—Effect of things done or allowed under regulations

Nothing done or allowed under these regulations or anything else necessary to give effect to the merger—

- (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 or by custom) or in any other way; or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or any other obligee wholly or in part from an obligation.

## Schedule—Superannuation rights of State Scheme contributors

### 1—Amendment of clause 1—Definitions

Clause 1 of the scheduled provisions is amended—

- (a) by striking out the definition of *interim period* and substituting the following definition:

*interim period* means—

- (a) in relation to an employee of SBSA or BSAL—the period beginning on the appointed day (within the meaning of the *State Bank (Corporatisation) Act 1994*) and ending on 30 June 1999;
- (b) in relation to a transferred employee—the period beginning on the day on which the employee is transferred to a position in the employment of ABAL or an ABAL subsidiary and ending on 30 June 1999;

- (c) in relation to a transferred St.George employee—the period beginning on the day on which the employee is transferred to a position in the employment of St.George and ending on 30 June 1999;
- (b) by inserting after the definition of *State Scheme contributor* the following definitions:
- St.George* means St.George Bank Limited;
- St.George subsidiary* means a body corporate that is a subsidiary of St.George for the purposes of section 46 of the *Corporations Law*;
- (c) by inserting after the definition of *transferred employee* the following definition:
- transferred St.George employee* means an employee of St.George who was—
- (a) as an employee of SBSA or a SBSA subsidiary, transferred to a position in the employment of BSAL under Part 5 of the *State Bank (Corporatisation) Act 1994* or a corresponding law; and
- (b) as an employee of BSAL, subsequently transferred to a position in the employment of the ABAL group under Part 4 of the *Bank Merger (BankSA and Advance Bank) Act 1996* or the law of another State or Territory; and
- (c) as an employee of ABAL or an ABAL subsidiary, subsequently transferred to a position in the employment of St.George.;
- (d) by inserting after its present contents as amended by this clause (now to be designated as subclause (1)) the following subclause:
- (2) For the purposes of this Schedule, an employee of ABAL or an ABAL subsidiary will be taken to have been transferred to a position in the employment of St.George if the employee ceased (either before or after the commencement of the *Bank Mergers (South Australia) (St. George/Advance) Regulations 1998*) to be an employee of ABAL or the subsidiary for the purpose of becoming an employee of St.George or a St.George subsidiary, whether or not rights or liabilities of ABAL or the subsidiary arising from the employee's employment were transferred to St.George or the subsidiary.

## 2—Amendment of clause 7—Superannuation Act and State Scheme contributors

Clause 7 of the scheduled provisions is amended—

- (a) by striking out from subclause (1) "or a transferred employee" and substituting ", or a transferred employee, or a transferred St.George employee,";
- (b) by inserting after subclause (2a) the following subclause:

- (2b) The Treasurer must, by order in writing, specify arrangements under which transferred St.George employees may continue as State Scheme contributors during the interim period and the Treasurer may, at any time, with the agreement of St.George, vary the order by further order in writing.;
- (c) by striking out from subclause (3) "or an ABAL subsidiary" and substituting ", an ABAL subsidiary or St.George";
- (d) by striking out from subclause (4) "or ABAL or an ABAL subsidiary (including an order under subclause (2) or (2a))" and substituting ", ABAL, an ABAL subsidiary or St.George (including an order under subclause (2), (2a) or (2b))";
- (e) by striking out from subclause (4)(c) "or the ABAL group" and substituting ", the ABAL group or St.George";
- (f) by inserting in subclause (5) "or a transferred St.George employee," after "transferred employee,";
- (g) by striking out from subclause (6)(b)(ii) "or a transferred employee" and substituting ", a transferred employee or a transferred St.George employee";
- (h) by striking out from subclause (8)(b)(ii) "or a transferred employee" and substituting ", a transferred employee or a transferred St.George employee";
- (i) by striking out from subclause (9)(c)(ii) "or a transferred employee" and substituting ", a transferred employee or a transferred St.George employee".

### **3—Amendment of clause 10—Retrenchment benefits for State Scheme contributors**

Clause 10 of the scheduled provisions is amended—

- (a) by inserting in subclause (1) ", or a transferred St.George employee" after "transferred employee";
- (b) by inserting after subparagraph (C) of subclause (7)(e)(ii) the following subparagraph:
  - (D) in the case of a transferred St.George employee—from St.George; or;
- (c) by inserting after subparagraph (C) of subclause (7)(f)(iii) the following subparagraph:
  - (D) in the case of a transferred St.George employee—from St.George.;
- (d) by inserting after subparagraph (C) of subclause (9)(e)(ii) the following subparagraph:
  - (D) in the case of a transferred St.George employee—from St.George.;
- (e) by inserting after paragraph (f) of subclause (11) the following paragraph:
  - (g) in the case of a transferred St.George employee—from St.George.



## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Expiry of regulations

The *Bank Mergers (South Australia) (St.George/Advance) Regulations 1998* expired on 1.9.2012: see *Subordinate Legislation Act 1978*.

### Principal regulations

Year	No	Reference	Commencement
1998	25	<i>Gazette 19.3.1998 p1545</i>	19.3.1998: r 2