



Australian Capital Territory

State Bank of South Australia (Transfer of Undertaking) Act 1994

A1994-31

Republication No 2

Effective: 23 February 2005 – 11 January 2006

Republication date: 23 February 2005

Last amendment made by A2005-2

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *State Bank of South Australia (Transfer of Undertaking) Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 23 February 2005. It also includes any amendment, repeal or expiry affecting the republished law to 23 February 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

State Bank of South Australia (Transfer of Undertaking) Act 1994

Contents

	Page
1 Name of Act	2
3 Definitions for Act	2
4 Transfer of assets and liabilities to BSAL	4
5 Conditions of transfer	4
6 Transitional provisions	5
7 Direct payment orders to accounts transferred to BSAL	7
8 Registration etc of transfers etc	8
9 Exclusion of obligation to inquire	8
10 Caveat in relation to land not transferred to BSAL	9
11 Re-transfer of assets or liabilities	9
13 Evidence	10
14 Effect of things done or allowed under Act	10

R2
23/02/05

State Bank of South Australia (Transfer of Undertaking)
Act 1994

contents 1

Effective: 23/02/05-11/01/06

Contents

		Page
Endnotes		
1	About the endnotes	11
2	Abbreviation key	11
3	Legislation history	12
4	Amendment history	12
5	Earlier republications	13



Australian Capital Territory

State Bank of South Australia (Transfer of Undertaking) Act 1994

An Act to provide for the transfer of part of the undertaking of the State Bank of South Australia to a company formed to carry on the business of banking under the Corporations Act, and for related purposes

R2
23/02/05

State Bank of South Australia (Transfer of Undertaking)
Act 1994

page 1

Effective: 23/02/05-11/01/06

1 Name of Act

This Act is the *State Bank of South Australia (Transfer of Undertaking) Act 1994*.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

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

asset means property including property held in a fiduciary capacity.

BSAL means the public company with the name ***Bank of South Australia Limited*** formed under the Corporations Act.

CEO of BSAL means the chief executive officer of BSAL (however described) or a delegate of the chief executive officer.

corresponding law means the South Australian Act or a law of another State or another Territory providing for the transfer of assets and liabilities between—

- (a) SBSA or SBSA subsidiaries; and
- (b) BSAL.

guarantee includes indemnity.

legal proceedings includes an arbitration and an administrative proceeding.

liability means a present, future or contingent liability (arising either at law or in equity) and includes a duty or non-pecuniary obligation.

property means real or personal property and includes—

- (a) a thing in action; and

Note A **thing** in action is an intangible personal property right recognised and protected by the law. Examples include debts, money held at a bank, shares, rights under a trust, copyright, and the right to sue for breach of contract.

- (b) a present, future or contingent right, privilege, interest or power.

SBSA means the State Bank of South Australia, or, according to the context, that body as continued in existence under the name **South Australian Asset Management Corporation**.

SBSA subsidiary or **subsidiary** means—

- (a) Beneficial Finance Corporation Limited; and
(b) any company classified under the South Australian Act as an SBSA subsidiary.

security means—

- (a) a mortgage, charge, lien or pledge; or
(b) a guarantee; or
(c) any other security for, or instrument relating to, the payment of money or the discharge of any other liability.

South Australian Act means the *State Bank (Corporatisation) Act 1994* (SA).

South Australian Treasurer means the Treasurer of South Australia, and includes, in relation to a particular power or function under this Act, a Minister of the Crown in right of South Australia exercising the function by delegation of the Treasurer of South Australia.

transfer period means the transfer period within the meaning of the South Australian Act.

transferred asset means an asset transferred to BSAL (and not re-transferred to SBSA or an SBSA subsidiary) under this Act or a corresponding law.

transferred liability means a liability transferred to BSAL (and not re-transferred to SBSA or an SBSA subsidiary) under this Act or a corresponding law.

4 Transfer of assets and liabilities to BSAL

- (1) The Treasurer may, with the concurrence of the South Australian Treasurer, by order in writing, transfer assets or liabilities of SBSA or an SBSA subsidiary to BSAL.
- (2) An order under this section shall be made within the transfer period.
- (3) If an order is made under this section on or before the appointed day, it takes effect (subject to any contrary provision in the order) on the appointed day.
- (4) An order under this section may be varied or revoked by the Treasurer, with the concurrence of the South Australian Treasurer, by further order in writing made before the order takes effect.
- (5) A transfer of an asset or liability under this section operates by force of this Act notwithstanding the provisions of any other law or any judgment, order or process of a court or any instrument.
- (6) The transfer of a liability under this section operates to discharge the body corporate from which the liability was transferred from the liability.

5 Conditions of transfer

The transfer of assets and liabilities under this Act has effect on the conditions fixed by the South Australian Treasurer under the South Australian Act.

6 Transitional provisions

The following transitional provisions apply in relation to transferred assets and liabilities:

- (a) if a judgment, order or process of a court applies to a transferred asset or liability or an instrument or other document, or oral agreement, understanding or undertaking, is applicable to a transferred asset or liability, then for the purpose of construing the judgment, order or process or the instrument or other document or oral agreement, understanding or undertaking (so far as it applies to the transferred asset or liability)—
 - (i) a reference to SBSA or an SBSA subsidiary is to be construed as a reference to BSAL; and
 - (ii) a reference to a branch, office or agency of SBSA or an SBSA subsidiary is to be construed as a reference to the corresponding branch, office or agency of BSAL, or a branch, office or agency designated by the CEO of BSAL as the corresponding branch, office or agency; and
 - (iii) a reference to an officer of SBSA or an SBSA subsidiary is to be construed as a reference to the corresponding officer of BSAL or an officer designated by the CEO of BSAL as the corresponding officer;
- (b) the relationship of banker and customer existing between SBSA and a customer in relation to a transferred asset or liability immediately before the transfer took effect continues between BSAL 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 SBSA or an SBSA subsidiary before the transfer takes effect

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

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- (i) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement—BSAL may exercise those rights without giving rise to any liability on the part of the body corporate from which the asset was transferred 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) BSAL has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from SBSA or an SBSA subsidiary as SBSA or the SBSA subsidiary would have had if there had been no transfer;
 - (k) legal proceedings in relation to a transferred asset or liability commenced by or against SBSA or an SBSA subsidiary shall (subject to discontinuance) be continued and completed by or against BSAL;
 - (l) in legal proceedings relevant to a transferred asset or liability—
 - (i) BSAL will have the same rights and privileges as SBSA or the SBSA subsidiary would have had if there had been no transfer; and
 - (ii) a document that could have been given in evidence by or against SBSA or an SBSA subsidiary if there had been no transfer may be given in evidence by or against BSAL;
 - (m) BSAL may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability either in its own name or in the name of the body corporate from which the asset or liability was transferred to BSAL.

7 Direct payment orders to accounts transferred to BSAL

An instruction, order or mandate given to a bank or other financial institution for payments to be made from an account at the bank or

other institution to an account at SBSA or an SBSA subsidiary is, if the account at SBSA or the SBSA subsidiary is transferred to BSAL under this Act or a corresponding law, taken to be an instruction, order or mandate for the payments to be made to the account at BSAL.

8 Registration etc of transfers etc

- (1) If a transferred asset or liability consists of land or an interest in land under the *Land Titles Act 1925*, the registrar-general—
 - (a) shall, on the application of BSAL, register in the register under that Act in the way prescribed under that Act the transfer to BSAL of any transferred asset or liability; and
 - (b) shall register in the way prescribed under that Act an instrument in registrable form, executed by BSAL, relating to property that is a transferred asset even though BSAL is not registered as the proprietor of the property.
- (2) If property consisting of land or an interest in land under the *Land Titles Act 1925*, is registered in the name of SBSA or an SBSA subsidiary, the registrar-general may register in the register under that Act in the way prescribed under that Act a dealing with the property by the body corporate in whose name the property is registered or by BSAL without being concerned to enquire whether the property is or is not a transferred asset.
- (3) If a transferred asset or liability consists of a bill of sale registered under the *Instruments Act 1933*, the registrar-general shall, on the application of BSAL, register in the way prescribed under that Act the transfer to BSAL of the bill of sale.

9 Exclusion of obligation to inquire

- (1) A person dealing with SBSA or an SBSA subsidiary is not obliged to inquire whether property to which the transaction relates is or is not a transferred asset.

- (2) A person dealing with BSAL is not obliged to enquire whether property to which the transaction relates is or is not a transferred asset.
- (3) If SBSA or an SBSA subsidiary was entitled to property before the appointed day, and after that day, SBSA, the SBSA subsidiary or BSAL, purports to deal with the property as if entitled to it, the transaction is valid even though the body corporate purporting to deal with the property is not entitled to do so because the property is, or is not, a transferred asset.
- (4) This section does not validate a transaction if the party dealing with SBSA, the SBSA subsidiary or BSAL has actual notice of the deficiency of title or acts fraudulently.

10 Caveat in relation to land not transferred to BSAL

- (1) SBSA or an SBSA subsidiary may lodge with the registrar-general a caveat in relation to land under the provisions of the *Land Titles Act 1925* that—
 - (a) is land of which that body is the registered proprietor; and
 - (b) is not a transferred asset.
- (2) A caveat lodged under this section in relation to land may forbid the registration of any dealing with the land by BSAL.
- (3) Subject to this section, the *Land Titles Act 1925*, division 10.4 applies to a caveat lodged under this section.

11 Re-transfer of assets or liabilities

- (1) The Treasurer may, with the concurrence of the South Australian Treasurer, by order in writing, re-transfer assets or liabilities (or both) from BSAL to SBSA or an SBSA subsidiary.
- (2) An order under this section shall be made within the transfer period.

- (3) The re-transfer of a liability under this section operates to discharge BSAL from the liability.
- (4) The provisions of this Act relating to transferred assets or liabilities apply in a reciprocal way in relation to assets or liabilities re-transferred under this section with the modifications and exclusions that are necessary in the context.

13 Evidence

- (1) A certificate issued by the South Australian Treasurer certifying that an asset or liability is or is not a transferred asset or liability is evidence of the matter so certified.
- (2) A document purporting to be a certificate of the South Australian Treasurer under subsection (1) is, unless the contrary is established, to be taken to be such a certificate and to have been properly given.

14 Effect of things done or allowed under Act

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 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 other obligee wholly or in part from an obligation.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

State Bank of South Australia (Transfer of Undertaking) Act 1994 No 31

notified 28 June 1994 (Gaz 1994 No S114)
commenced 28 June 1994 (s 2)

as amended by

Land Titles (Consequential Amendments) Act 1995 No 54 sch pt 1

notified 20 December 1995 (Gaz 1995 No S313)
commenced 20 June 1996

Legislation (Consequential Amendments) Act 2001 No 44 pt 369

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 369 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Revenue Legislation Repeal Act 2005 A2005-2 s 9

notified LR 22 February 2005
s 1, s 2 commenced 22 February 2005 (LA s 75 (1))
s 9 commenced 23 February 2005 (s 2)

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.3919

Registration etc of transfers etc

s 8 am 1995 No 54 sch pt 1

Caveat in relation to land not transferred to BSAL

s 10 am 1995 No 54 sch pt 1

Stamp and financial institutions duty

s 12 om A2005-2 s 9

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 20 June 2002	12 Sept 2001– 22 Feb 2005	A2001-44	initial republication and amendments by A2001-44

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