

1994

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**STATE BANK OF SOUTH AUSTRALIA (TRANSFER
OF UNDERTAKING) BILL 1994**

EXPLANATORY MEMORANDUM

**Circulated by the authority of the Chief Minister and Treasurer
Rosemary Follett, MLA**

Details of the State Bank of South Australia (Transfer of Undertakings) Bill 1994

Title

Clause 1 - provides for the short title for this Act to be the State Bank of South Australia (Transfer of Undertaking) Act 1994 (the Act).

Commencement

Clause 2 - provides for commencement on the date on which the Act is notified in the Gazette.

Interpretation

Clause 3 - contains definitions of terms used in the Act. For example:

"asset" and "liabilities" are given expansive meanings.

"BSAL" is defined as the public company with the name "Bank of South Australia Limited" formed under the Corporations Law.

"SBSA" is 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".

"transfer period" is the transfer period within the meaning of the South Australian Act which is the period from the commencement of the South Australian Act until the end of the period of 6 months from the appointed day. However, this period can be reduced by proclamation under the South Australian Act.

"transferred assets" and "transferred liabilities" encompass assets and liabilities transferred under a corresponding law of another jurisdiction as well as those transferred under this Act.

Transfer of assets and liabilities to BSAL

Clause 4 - empowers the Treasurer, with the concurrence of the South Australian Treasurer, to transfer assets and liabilities of the State Bank of South Australia (SBSA) or an SBSA subsidiary to BSAL. This is to be done by order in writing made within the transfer period (as defined in clause 3).

An order may be varied or revoked by the Treasurer by further order in writing made, with the concurrence of the South Australian Treasurer, before the order takes effect.

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

Summary

The South Australian Government has decided that the State Bank of South Australia (SBSA) should be restructured and then disposed of on the open market.

To facilitate this sale the South Australian Government has decided to corporatise the SBSA by transferring its banking business to a public company to be incorporated under the Corporations Law as the State Bank of South Australia Limited. This public company will initially be owned by the South Australian Government.

The State Bank of South Australia (Transfer of Undertaking) Bill 1994 is being introduced at the request of the South Australian Government as a complimentary measure to legislation in that State. The Bill will facilitate the restructuring of the SBSA, which is to be brought under Reserve Bank supervision on 1 July 1994, by providing for the transfer of legal ownership of assets located in the Territory and to exempt the transfers from ACT stamp duty.

The activities of the bank in the ACT have been limited. It would appear that the only assets in the Territory are advances to corporate customers secured by mortgage debentures and other forms of security over the borrowed assets. The ACT does not impose stamp duty on these types of transactions.

The Financial Institutions Duty Act 1987 provides exemptions from FID following takeovers, amalgamations and changes of identity of financial institutions.

The corporatisation of the bank will therefore have no impact on stamp duty revenues, the bank or its customers.

Financial Implications

There are no known financial implications for the ACT.

The clause provides that a transfer of an asset or liability operates by force of the Act notwithstanding the provisions of any other law or instrument.

The clause further declares that the transfer of a liability operates to discharge the body corporate from which the liability was transferred from the liability.

Conditions of transfer

Clause 5 - under this clause, the transfer of assets and liabilities is to have effect on the conditions fixed by the South Australian Treasurer under the South Australian Act.

These conditions of transfer may free transferred property from a trust (if each beneficiary is SBSA or an SBSA subsidiary) and may fix the value of transferred assets and liabilities and impose a liability on the transferee reflecting that value.

Transitional provisions

Clause 6 - this clause contains a series of transitional provisions related to transferred assets and liabilities. The general purpose of the provisions is to put BSAL in the same legal position as SBSA or the SBSA subsidiary from which assets and liabilities are transferred.

Direct payment orders to accounts transferred to BSAL

Clause 7 - this clause is designed to ensure that an instruction, order or mandate given to a bank or other financial institution for payments to be made to an account at SBSA or an SBSA subsidiary continues to operate so that the payments are made to the account when transferred to BSAL under this Act or a corresponding law.

Registration etc. of transfers etc.

Clause 8 - under this clause, the Registrar-General will be required to register or record in the register under the Real Property Act 1925 in the manner prescribed under that Act, the transfer to BSAL of any transferred asset or liability and to register, in the manner 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.

The Registrar-General is authorised by this clause to register or record in the Register under the Real Property Act 1925 in the manner prescribed under that Act, a dealing with property by SBSA

or the SBSA subsidiary 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.

The Registrar-General is also authorised by this clause to register in the manner prescribed by the Instruments Act 1933 a transfer to BSAL of a bill of sale.

Exclusion of obligation to enquire

Clause 9 - under this clause, a person dealing with SBSA or an SBSA subsidiary or with BSAL is relieved of any obligation to enquire whether property to which the transaction relates is or is not a transferred asset.

Further, the clause provides that if SBSA or an SBSA subsidiary was entitled to property before the appointed day, and after the day, SBSA or 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.

This will 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.

Caveat in respect of land not transferred to BSAL

Clause 10 - this clause is intended to prevent the possibility of there being a dealing by BSAL with land that has not been transferred. Earlier provisions of the Act facilitate dealings by BSAL by removing any requirement for registering authorities or third parties to enquire whether property has or has not been transferred to BSAL. This clause will allow SBSA or an SBSA subsidiary to lodge with the Registrar-General a caveat under the provisions of the Real Property Act 1925.

Re-transfer of assets or liabilities

Clause 11 - the Treasurer is authorised by this clause to re-transfer assets or liabilities from BSAL to SBSA or an SBSA subsidiary. This is to be by order in writing with the concurrence of the South Australian Treasurer. A transfer may only be made during the transfer period.

Stamp and financial institutions duty

Clause 12 - this clause provides an exemption from stamp duty under the Stamp Duties and Taxes Act 1987 and financial institutions duty under the Financial Institutions Duty Act 1987 in respect of any transfer effected by order of the Treasurer under this Act and any application or entry made, or receipt given or anything else for a purpose connected with, or arising out of, such a transfer.

Evidence

Clause 13 - this clause provides for a certificate issued by the South Australian Treasurer to be evidence as to whether an asset or liability is or is not a transferred asset or liability.

Effect of things done or allowed under this Act

Clause 14 - This clause declares that nothing done or allowed under this Act is to:

- a) constitute a breach of, or default under, an Act or other law;
- b) constitute a breach of, or default under, a contract, agreement, understanding or undertaking;
- c) constitute a breach of a duty of confidence (whether arising by contract, in equity, by custom, or in any other way);
- d) constitute a civil or criminal wrong;
- e) terminate an agreement or obligation, or fulfil any condition that allows a person to terminate an agreement or obligation, or give rise to any other right or remedy; or
- f) releases a surety or obligee wholly or in part from an obligation.