



New South Wales

# Bank Mergers (St. George Partnership Banking) Regulation 1997

under the  
Bank Mergers Act 1996

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Bank Mergers Act 1996*.

MICHAEL EGAN, M.L.C.,  
Treasurer

## Explanatory note

The object of this Regulation is to provide for the merger of St. George Partnership Banking Limited (*Partnership Banking*) with St. George Bank Limited (*St. George*).

The Regulation is made pursuant to the powers contained in sections 4-6 of the *Bank Mergers Act 1996*.

## Part 1 Preliminary

**Clause 1** specifies the name of the Regulation.

**Clause 2** provides for the commencement of the Regulation.

**Clause 3** defines certain words and expressions used in the Regulation.

**Clause 4** provides that this explanatory note and the table of contents do not form part of the Regulation.

## **Part 2      Bank reorganisation**

**Clause 5** provides that St. George will become the successor in law of Partnership Banking on the succession day and dissolves Partnership Banking on that day. The provision makes it clear that St. George is the universal successor of Partnership Banking for all purposes, including private international law.

**Clause 6** confirms that the assets and liabilities of Partnership Banking vest in St. George on the succession day.

**Clause 7** continues the effect of instruments to which Partnership Banking was a party, as if St. George were referred to in the instruments.

**Clause 8** provides that places of business of Partnership Banking will be taken to be places of business of St. George.

**Clause 9** substitutes St. George as a party in existing legal proceedings instead of Partnership Banking and provides for evidence in proceedings to be admissible against St. George in the same way it was admissible against Partnership Banking before the succession day.

**Clause 10** confirms that the staff of Partnership Banking will become the staff of St. George without affecting their continuity or conditions of service or any rights to leave or that are related to superannuation or retirement benefits.

**Clause 11** provides that directors of Partnership Banking cease to hold office on and from the succession day and are not by virtue only of the proposed Regulation directors of St. George.

**Clause 12** makes it clear that customers and depositors of Partnership Banking are to have the same relationship with St. George.

**Clause 13** requires St. George to do whatever is necessary to ensure that proposed Part 2 (which provides for St. George to be the successor of Partnership Banking) is effective, particularly in relation to its business outside New South Wales.

**Clause 14** requires St. George, within one month after the succession day, to request that Partnership Banking's authority to carry on banking business in Australia be revoked.

## **Part 3      Miscellaneous**

**Clause 15** prevents proposed Part 2 from operating unless the amount (if any) determined by the Treasurer for taxes, charges, duties or other imposts in relation to the merger of the banks is paid. The Treasurer may give a certificate to the bank concerned when satisfied that the required amount has been paid.

**Clause 16** empowers an authorised person to certify certain matters for the purposes of the proposed Act, including matters relating to assets or acts done for such purposes.

**Clause 17** deems St. George to be the registered proprietor of any interest in land held by Partnership Banking immediately before the succession day and prevents the Registrar-General from enquiring into whether St. George has become the owner.

**Clause 18** enables St. George to comply with the requirements of the *Corporations Law* for notice of change of ownership of charges to be given in respect of all charges of Partnership Banking by lodging a certificate signed by an authorised person.

**Clause 19** requires a person or authority who has, under New South Wales law, responsibility for keeping a register of assets to register St. George as the owner of any assets of which St. George has become the owner by virtue of the proposed Act, if a certificate by an authorised person is given to that effect.

**Clause 20** provides that a document purporting to be a certificate under the proposed Part is taken to be such a certificate and to have been properly given, unless the contrary is proved.

**Clause 21** makes the public documents of Partnership Banking public documents of St. George for the purposes of sections 156 to 158 of the *Evidence Act 1995*.

**Clause 22** construes references in Acts and other documents to Partnership Banking as references to St. George.

**Clause 23** makes it clear that the regulation has effect despite anything in any contract, deed, undertaking, agreement or other instrument and prevents St. George, Partnership Banking or any other person from being in breach of a law of New South Wales, a contractual provision or other condition because of the operation of the regulation. The provision also makes it clear that the regulation does not exempt St. George from having to comply with any Act relating to companies carrying on the business of banking.

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## Bank Mergers (St. George Partnership Banking) Regulation 1997

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the Bank Mergers (*St. George Partnership Banking*) Regulation 1997.

#### 2 Commencement

This Regulation commences on 1 April 1997.

#### 3 Definitions

(1) In this Regulation:

**asset** means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent or tangible or intangible) in real or personal property of any kind, and
- (b) any chose in action, and
- (c) any right, interest or claim of any kind, including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing), and
- (d) any asset within the meaning of Part IIIA of the *Income Tax Assessment Act 1936* of the Commonwealth.

**authorised person** for the purposes of a provision of this Regulation means:

- (a) the Treasurer, or
- (b) the chief executive officer of St. George, or
- (c) any of the following persons, if the Treasurer designates in writing that person as an authorised person for the purposes of the provision:
  - (i) a senior executive of St. George,
  - (ii) a member of the Chief Executive Service or the Senior Executive Service of the Public Service.

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Part 1 Preliminary

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**chief executive officer** 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 document and an oral agreement.

**interest**, in relation to land, includes:

- (a) a legal or equitable estate or interest in the land, or
- (b) a right, power or privilege over, or in relation to, the land.

**liability** includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective).

**Partnership Banking** means St. George Partnership Banking Limited.

**St. George** means St. George Bank Limited.

**succession day** means the day on which this Regulation commences.

**translated asset** means an asset referred to in clause 6.

**translated liability** means a liability referred to in clause 6.

**translated instrument**, in relation to Partnership Banking, means an instrument (including a legislative instrument other than this Regulation) subsisting immediately before the succession day:

- (a) to which Partnership Banking is a party, or
  - (b) that was given to, by or in favour of, Partnership Banking, or
  - (c) that refers to Partnership Banking, or
  - (d) under which money is, or may become, payable or other property is, or may become, liable to be transferred, to or by Partnership Banking.
- (2) Where reference is made in this Regulation to anything done for a purpose connected with, or arising out of, the operation or effect of this Regulation, that reference is taken to include any transaction entered into, or any instrument or document made, executed, lodged or given, for that purpose.

## 4 Notes

The explanatory note and table of contents do not form part of this Regulation.

## **Part 2      Bank reorganisation**

### **5    Consequence of succession day**

- (1) On the succession day, in accordance with the principle of succession in law:
  - (a) St. George becomes the successor in law of Partnership Banking and is for all purposes a continuation of and the same legal entity as Partnership Banking, and
  - (b) Partnership Banking is liquidated and dissolved.
- (2) Nothing in any other provision of this Part limits the operation of this clause.

### **6    Assets and liabilities**

On the succession day:

- (a) all assets of Partnership Banking, wherever located, vest in, or are otherwise available for the use of, St. George without the need for any conveyance, transfer, assignment or assurance and without the need for any prior notice or further act, and
- (b) all liabilities of Partnership Banking, wherever located, become liabilities of St. George without the need for any prior notice or further act.

### **7    Translated instruments**

- (1) Each translated instrument in respect of Partnership Banking continues to have effect, according to its tenor, on and after the succession day, as if a reference in the instrument to Partnership Banking were a reference to St. George.
- (2) Without limiting subclause (1), an instrument securing the payment of moneys owing to Partnership Banking is taken to secure moneys owing to St. George for the purposes of determining liability for stamp duty in respect of that instrument or any collateral instrument.

### **8    Places of business**

On and after the succession day, a place that, immediately before that day, was a place of business of Partnership Banking is taken to be a place of business for St. George.

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### **9 Legal proceedings and evidence**

- (1) Where, immediately before the succession day, proceedings (including arbitration proceedings) to which Partnership Banking was a party were pending or existing in any court or tribunal, St. George is, on that day, substituted for Partnership Banking as a party to the proceedings and has the same rights in the proceedings as Partnership Banking had.
- (2) Where, before the succession day, documentary or other evidence would have been admissible for or against the interests of Partnership Banking, that evidence is admissible, on or at any time after that day, for or against the interests of St. George.

### **10 Transfer of staff**

On the succession day each employee of Partnership Banking ceases to be employed by Partnership Banking and becomes an employee of St. George on the same terms and conditions as those that applied immediately before the succession day and this section does not:

- (a) affect his or her contract of employment, or
- (b) interrupt his or her continuity of service, or
- (c) prejudice his or her existing or accruing rights to recreation leave, sick leave, superannuation or long service leave or any other employee entitlement existing immediately before the succession day, or
- (d) affect rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of Partnership Banking, or
- (e) constitute a retrenchment or redundancy or give rise to any right of the employee to receive any payment or other benefit.

### **11 Directors**

A person holding office as a director or secretary of Partnership Banking immediately before the succession day ceases to hold office on and from the succession day and is not by virtue only of this Regulation a director or secretary of St. George.



## **12 Relationships with customers and depositors**

The relationship between Partnership Banking and a customer or depositor at an office or branch or agency of Partnership Banking is, on and after the succession day, between St. George and that customer or depositor, and gives rise to the same rights and duties (including rights of set-off) as would have existed before that day if that relationship had always been between St. George and the customer or depositor. Any instruction, order, direction, mandate or authority given by that customer or depositor to Partnership Banking and subsisting on or given after the succession day is, unless and until revoked or cancelled, taken to have been given to St. George.

## **13 St. George to do what is necessary to carry out reorganisation**

St. George must do whatever is necessary to ensure that this Part is fully effective, particularly in relation to its business outside New South Wales, whether within or outside Australia.

## **14 Revocation of banking authority**

Within one month following the succession day, Partnership Banking must by notice in writing to the Treasurer in accordance with section 9 of the *Banking Act 1959* of the Commonwealth request that the authority to carry on banking business in Australia granted to Partnership Banking be revoked.

## 1997 No 120

Clause 15      Bank Mergers (St. George Partnership Banking) Regulation 1997

Part 3          Miscellaneous

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### Part 3      Miscellaneous

#### 15    Payment of an amount instead of State duties or other imposts

- (1)    Despite any other provision of this Regulation, Part 2 does not have effect unless any requirement made under this clause has been complied with or the Treasurer determines that no requirement is to be made. The Treasurer may issue a certificate to that effect under subclause (4) or (5).
- (2)    The Treasurer may require St. George to pay to the Treasurer instead of all duties, taxes, charges, rates or other imposts for which St. George or Partnership Banking would be liable under the law of this State as a result of, or in connection with, the merger of Partnership Banking with St. George an amount that is, in the opinion of the Treasurer, proper in the circumstances.
- (3)    The amount payable to the Treasurer is to be determined by the Treasurer in accordance with such principles as the Treasurer thinks appropriate.
- (4)    The Treasurer must, when satisfied that a requirement under this clause has been complied with, give St. George a certificate stating that the requirement has been complied with.
- (5)    If the Treasurer determines that no requirement will be made under this clause, the Treasurer must give St. George a certificate stating that no requirement is to be made.
- (6)    If a certificate is given under subclause (4) or (3), St. George is not liable for any duties, taxes, charges, rates or other imposts of a kind referred to in subclause (2), despite the provisions of any Act relating to the payment of duties, taxes, charges, rates or other imposts.
- (7)    A copy of a certificate under this clause, certified as such by the chief executive officer of St George, or a person authorised to do so by the chief executive officer, is for all purposes and in all courts, tribunals and proceedings, conclusive evidence of the matters certified.
- (8)    This clause does not apply to any duties, taxes, charges, rates or other imposts:
  - (a)    payable to the Australian Securities Commission under the *Corporations Law*, *Corporations Regulations*, *ASC Law* or *ASC Regulations*, or
  - (b)    payable to the Registrar-General in respect of any act, dealing or other transaction relating to land.

**16 Certificates evidencing operation of Regulation**

- (1) An authorised person may, by certificate signed by that person, certify any matter in relation to the operation or effect of this Regulation and, in particular, may certify that:
  - (a) a specified matter or thing relevant to St. George is an aspect of the operation or effect of this Regulation, or
  - (b) a specified thing was done for a purpose connected with, or arising out of, the operation or effect of this Regulation in relation to St. George, or
  - (c) a specified asset of Partnership Banking has become a translated asset of St. George, or
  - (d) a specified liability of Partnership Banking has become a translated liability of St. George.
- (2) For all purposes and in all courts, tribunals and proceedings, a certificate under subclause (1) is conclusive evidence of the matters certified, except to the extent that the contrary is established.

**17 Interests in land**

- (1) Without prejudice to the generality of this Regulation and despite anything to the contrary in any other Act or law, if, immediately before the succession day, Partnership Banking is, or is to be taken to be, the registered proprietor of an interest in land under the *Real Property Act 1900*, on and after the succession day:
  - (a) St. George is to be taken to be the registered proprietor of that interest in land, and
  - (b) St. George has the same rights and remedies in respect of that interest as Partnership Banking had.
- (2) No person dealing with St. George (in any capacity at all), nor the Registrar-General, nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, is, in respect of any dealing or transaction in relation to land entered into or purporting to be entered into by St. George, where the registered proprietor of that land is Partnership Banking, to be concerned to see, or enquire into, whether the land has vested in St. George.

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Clause 18            Bank Mergers (St. George Partnership Banking) Regulation 1997

Part 3                Miscellaneous

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### 18 Company charges

Section 268 (1) of the *Corporations Law* is taken to have been complied with in respect of all charges of which St. George becomes the holder by virtue of this Regulation if there is lodged with the Australian Securities Commission a certificate signed by an authorised person stating that by virtue of this Regulation the assets and liabilities of Partnership Banking have become vested in St. George.

### 19 Other assets

(1) Where:

- (a) an asset (other than an interest in land referred to in clause 17 or a company charge referred to in clause 18) becomes under this Regulation an asset of St. George, and
- (b) any person or authority has, under a law of this State, responsibility for keeping a register in respect of assets of that kind,

then:

- (c) any requirement of that law relating to the transfer of the property from one person to another is taken to have been complied with if there is lodged with that person or authority a certificate signed by an authorised person stating that by virtue of this Regulation the assets and liabilities of Partnership Banking have vested in St. George, and
- (d) that person or authority, on being requested to do so, must make any amendments to that register which are necessary to make it accurately reflect the effect of this Regulation.

(2) This clause does not affect the operation of the *Corporations Law*.

### 20 Documents purporting to be certificates

A document purporting to be a certificate given under this Part is, unless the contrary is established, taken to be such a certificate and to have been properly given.

## 21 Evidence

- (1) The public documents of Partnership Banking are for the purposes of sections 156 to 158 of the *Evidence Act 1995* taken to be, and to have been, public documents used in the ordinary business of St. George.
- (2) For the purposes of this clause, *public documents* has the same meaning as in section 3 of the *Evidence Act 1995*.

## 22 Construction of references

If any Act or regulation (other than this Act or Regulation) or any document whenever made or executed (other than a document constituting or relating to a provident, benefit, superannuation or retirement fund) or any register established or kept under any Act contains any reference express or implied to Partnership Banking or a body listed in Schedule 1, the reference is, on and after the appointed day, to be read as a reference to St. George, unless the context otherwise requires.

## 23 Regulation to have effect despite other laws

- (1) This Regulation has effect despite anything in any contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done by or under this Regulation:
  - (a) places St. George, Partnership Banking or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong, or
  - (b) places St. George, Partnership Banking or another person in breach of
    - (i) any law of New South Wales, or
    - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information, or
  - (c) fulfils any condition which allows a person to terminate or otherwise exercise a right or power under any agreement or liability, or
  - (d) releases any surety or other obligor, wholly or partly, from any liability, whether actual, contingent or prospective.

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Clause 23            Bank Mergers (St. George Partnership Banking) Regulation 1997

Part 3                Miscellaneous

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- (3) Without limiting subclause (1), where, apart from this clause, the advice or consent of a person would be necessary in any particular respect in order to give effect to this Regulation, the advice is taken to have been obtained or the consent is taken to have been given, as the case requires.
- (4) Nothing in this Regulation exempts St. George from the provisions of any Act or statutory instrument relating to companies carrying on the business of banking.

Bank Mergers (St. George Partnership Banking) Regulation 1997

Previous bodies

Schedule 1

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## **Schedule 1   Previous bodies**

(Clause 22)

Barclays Australia Holdings Limited

Barclays International Australia Limited

Barclays Bank Australia Limited