

Version No. 005
**State Bank (Succession of Commonwealth
Bank) Act 1990**

No. 94 of 1990

Version incorporating amendments as at
1 December 2013

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Version No. 005
**State Bank (Succession of Commonwealth
Bank) Act 1990**

No. 94 of 1990

Version incorporating amendments as at
1 December 2013

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to give effect to an Agreement between the State and the Commonwealth Bank for the succession of the Commonwealth Bank to the State Bank.

2 Commencement

- (1) Parts 1 and 2 come into operation on the day on which this Act receives the Royal Assent.
- (2) Part 4 comes into operation on the completion date or a day to be proclaimed, whichever is the earlier.
- (3) Parts 3 and 5 come into operation on the day after the completion date.

3 Completion date

The Minister must, by notice published in the Government Gazette, give notice of the date that is the completion date within the meaning of the Agreement.

4 Definitions

In this Act—

Agreement means the Agreement a copy of which is set out in Schedule 1;

Commonwealth Bank means the Commonwealth Bank of Australia;

completion date means the date of which notice is given in accordance with section 3;

employee, in relation to the State Bank, means a person appointed or employed by the State Bank;

instrument includes a document and an oral agreement;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

related corporation, in relation to the State Bank, has the same meaning as in section 3 of the **State Bank Act 1988**;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

State Bank means the State Bank of Victoria;

State Bank instrument means an instrument (including a legislative instrument other than this Act) subsisting immediately before the succession day—

(a) to which the State Bank was a party; or

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- (b) that was given to or in favour of the State Bank; or
 - (c) that refers to the State Bank; or
 - (d) under which—
 - (i) money is, or may become, payable to or by the State Bank; or
 - (ii) other property is to be, or may become liable to be, transferred to or by the State Bank;

subsidiary means a corporation that is a subsidiary of Tricontinental Holdings Ltd within the meaning of section 7 of the **Companies (Victoria) Code**;

succession day means the day on which Part 3 comes into operation;

transferred employee means a person who, under section 21, is regarded as having been appointed by the Commonwealth Bank;

Tricontinental means each and all of Tricontinental Holdings Limited and its subsidiaries, whether incorporated before or after the commencement of this section.

5 Crown to be bound

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of

the Parliament permits, the Crown in all its other capacities.

6 Extra-territorial operation

It is the intention of the Parliament that the operation of this Act should, as far as possible, include operation in relation to the following—

- (a) land situated outside Victoria, whether in or outside Australia;
 - (b) things situated outside Victoria, whether in or outside Australia;
 - (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;
 - (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a foreign country.
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PART 2—AGREEMENT

7 Ratification of Agreement

- (1) The Agreement is ratified and takes effect as if it had been enacted in this Act.
- (2) All Ministers, authorities of the State and other persons concerned are authorised to carry out the Agreement.

8 Certain money to be paid to Public Account

The sum of \$45 000 000 must be paid by the Treasurer into the Public Account from the proceeds of sale received under the Agreement.

PART 3—SUCCESSION

9 Commonwealth Bank to become successor in law of State Bank

On the succession day—

- (a) all property and rights of the State Bank, wherever located, vest in the Commonwealth Bank; and
- (b) all liabilities of the State Bank, wherever located, become liabilities of the Commonwealth Bank; and
- (c) the Commonwealth Bank becomes the successor in law of the State Bank; and
- (d) the State Bank is dissolved.

10 State Bank instruments

Each State Bank instrument continues to have effect according to its tenor on and after the succession day as if a reference in the instrument to the State Bank were a reference to the Commonwealth Bank.

11 Places of business

On and after the succession day, a place, wherever located, that, immediately before that day, was a place of business of the State Bank is to be taken to be a place of business of the Commonwealth Bank.

12 Proceedings

Where, immediately before the succession day, proceedings (including arbitration proceedings) to

which the State Bank was a party were pending or existing in any court or tribunal, then, on and after the succession day, the Commonwealth Bank is substituted for the State Bank as a party to the proceedings and has the same rights in the proceedings as the State Bank had.

13 Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if, immediately before the succession day, the State Bank is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after the succession day—

- (a) the Commonwealth Bank is to be taken to be the registered proprietor of that interest in land; and
- (b) the Commonwealth Bank has the same rights and remedies in respect of that interest as the State Bank had.

14 Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Act.
- (2) If, at the commencement of this section, section 7 of the **Transfer of Land (Computer Register) Act 1989** is not in operation, then, until that section comes into operation, subsection (1) of this section has effect as if it provided as follows:

"(1) The Registrar of Titles, on being requested to do so and on production of any relevant duplicate certificate of title or other relevant instrument, must make any amendments to the Register Book under the **Transfer of Land Act 1958** and to any duplicate Crown Grant, duplicate certificate of title, duplicate registered instrument or other document that are necessary because of the operation of this Act."

15 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything done under this Act or the Agreement or in respect of any act or transaction connected with or necessary to be done by reason of this Act or the Agreement, including a transaction entered into or an instrument made, executed, lodged or given.

16 Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of the State Bank if this Act had not been passed, is admissible for or against the interests of the Commonwealth Bank.
- (2) The **Evidence Act 2008** applies with respect to the books of account of the State Bank and to entries made in those books of account before the succession day as if those books of account and entries were business records.

S. 16(2)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 53.1).

* * * * *

S. 16(3)
repealed by
No. 69/2009
s. 54(Sch. Pt 1
item 53.2).

17 Company charges

Section 206(1) of the **Companies (Victoria) Code** is to be taken to have been complied with in respect of all charges of which the Commonwealth Bank becomes the holder by virtue of this Act if there is lodged in the manner specified in paragraph (a) of that section a certificate signed by a person authorised by the Commonwealth Bank or by an officer acting under delegation from such a person stating that by virtue of this Act the Commonwealth Bank is the successor in law of the State Bank.

18 Validity of things done under this Act or the Agreement

Nothing effected by this Act or done or suffered by the State Bank, the Treasurer or the Commonwealth Bank under this Act or the Agreement—

- (a) is to be regarded as placing the State Bank, the Treasurer or the Commonwealth Bank in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) is to be regarded as placing any of them in breach of or as constituting a default under

any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or

- (c) is to be regarded as fulfilling any condition which allows a person to terminate any agreement or obligation; or
- (d) releases any surety or other obligee wholly or in part from any obligation.

19 Validity of acts and transactions

The validity of an act or transaction of the State Bank or Board of Directors of the State Bank must not be called in question in any proceedings on the ground that any provision of the **State Bank Act 1988** had not been complied with.

20 Immunity of directors and officers

- (1) No liability attaches to a person who was—
 - (a) was a director or officer of the State Bank; or
 - (b) was a director of a related corporation who was nominated or appointed to the office by the State Bank—
-

for any act or omission done or made, in good faith, and in carrying out, or purporting to carry out, the duties of his or her office as such a director or officer.

- (2) Any liability that, but for the enactment of this Act, would have attached to the State Bank under section 49(2) of the **State Bank Act 1988**, attaches instead to the State.

21 Transfer of State Bank staff to Commonwealth Bank

- (1) A person who was an employee of the State Bank immediately before the succession day is to be regarded as—
- (a) having been appointed by the Commonwealth Bank under section 88 of the Commonwealth Banks Act 1959 of the Commonwealth as amended and in force for the time being, with effect from the succession day; and
 - (b) having been so appointed on the same terms and conditions as those that applied to the person, immediately before the succession day, as an employee of the State Bank; and
 - (c) having accrued an entitlement to benefits, in connection with that appointment by the Commonwealth Bank, that is equivalent to the entitlement that the person had accrued, as an employee of the State Bank, immediately before the succession day.

- (2) The service of a transferred employee as an officer of the Commonwealth Bank is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the succession day, as an employee of the State Bank.
- (3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the State Bank because of this Act.
- (4) A director, secretary or auditor of the State Bank does not, because of the operation of this Act, become a director, secretary or auditor of the Commonwealth Bank.
- (5) The SBV Staff Superannuation Fund as constituted and governed under General Orders and Rules in force under the **State Bank Act 1988** immediately before the commencement of this section continues, on and after that commencement, as the SBV Staff Superannuation Fund continued in force and governed by the Trust Deed made before that commencement between the State Bank, SBV Staff Superannuation Pty Ltd and the Commonwealth Bank.
- (6) All rights, benefits, entitlements, liabilities and obligations of the members or former members of the SBV Staff Superannuation Fund and their beneficiaries existing immediately before the commencement of this section continue after that

commencement, subject to the Trust Deed referred to in subsection (5).

22 Guaranteed instruments

- (1) The due satisfaction of amounts payable by the Commonwealth Bank as a result of, or in connection with, an instrument issued or entered into by the State Bank before the commencement of this Part and referred to in Part A of Schedule 2 that, by reason of this Part, are liabilities of the Commonwealth Bank including, without limiting the generality of the foregoing, the payment of expenses of enforcing or obtaining or endeavouring to enforce or obtain such satisfaction is guaranteed by the Government of Victoria.
- (2) The Treasurer, on behalf of the Government of Victoria, may guarantee the due satisfaction of amounts payable by the Commonwealth Bank under any other instrument—
 - (a) issued or entered into before the commencement of this Part by the State Bank; and
 - (b) declared by notice published in the Government Gazette to be an instrument to which this section applies—

including, without limiting the generality of the foregoing, the payment of expenses of enforcing or obtaining or endeavouring to enforce or obtain such satisfaction.

- (3) A declaration under subsection (2) is deemed to have been made on the date of commencement of this section.
- (4) Subsection (1) or (2) ceases to apply in relation to an instrument upon the Government of Victoria being released from the guarantee in accordance with the terms of the instrument.

23 Continuing guarantees

Despite the enactment of this Act, a guarantee or indemnity given by the Treasurer before the commencement of this Part in respect of—

- (a) the performance, satisfaction or discharge of obligations or liabilities of the State Bank or a related corporation under an instrument issued or entered into by the State Bank or a related corporation before the commencement of this Part and referred to in Part B of Schedule 2; or
- (b) any other instrument so issued or entered into and declared in writing by the Treasurer to be an instrument to which this section applies—

continues as a like guarantee or indemnity.

24 Other guarantees and arrangements lapse

Except as otherwise provided in this Act—

- (a) the deeds referred to in Part C of Schedule 2;
and
- (b) all guarantees, indemnities and other support
and all other arrangements under which the
Government or State of Victoria by Act or
otherwise guaranteed, indemnified or
otherwise supported the performance,
satisfaction or discharge of obligations or
liabilities of the State Bank or a related
corporation, other than Tricontinental—

lapse on the succession day and have no further
force or effect.

25 Liability of Government

A guarantee, indemnity or other support—

- (a) under this Part; or
- (b) that continues by reason of this Part; or
- (c) under the Agreement—

may be enforced under Part II of the **Crown
Proceedings Act 1958**.

26 Appropriation for guarantee etc.

- (1) Any sums required by the Treasurer in fulfilling
any liability arising under a guarantee, indemnity,
other support, arrangement, deed or agreement

under or referred to in section 22, 23 or 25 shall be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

- (2) Any sums received or recovered by the Treasurer from the Commonwealth Bank or otherwise in respect of sums paid by the Treasurer under a guarantee, indemnity, other support, arrangement, deed or agreement shall be paid into the Consolidated Fund.

27 Certain deeds and guarantees not affected

Nothing in this Act affects the continuing operation of—

- (a) the deed of acquisition of indebtedness or interest or the benefit thereof dated 27 July 1990 and made between the Treasurer and the State Bank as varied by the deed of variation dated 23 August 1990 and made between the Treasurer and the State Bank and the deed of release which is exhibit "H" to the Agreement; or
- (b) any guarantee, indemnity or other support under which the Government or State of Victoria by Act or otherwise guaranteed, indemnified or otherwise supported the obligations or liabilities of any person to the State Bank or a related corporation.

PART 4—TRICONTINENTAL

28 Continuing rights

(1) In this Part—

Continuing rights means rights of the State Bank existing immediately before the commencement of this section in respect of any loss suffered or damage incurred or any loss or damage which but for the operation of section 9(c) or (d) or of section 29, would have been suffered or incurred by the State Bank—

- (a) in connection with the incorporation, promotion, acquisition, activities or accounts of Tricontinental; or
 - (b) in connection with anything done by an officer of Tricontinental; or
 - (c) as a shareholder in or as a provider of financial accommodation to Tricontinental; or
 - (d) in consequence, or as a result, of any act, omission, neglect, default or wrongdoing on the part of an officer of the State Bank in connection with the incorporation, promotion, acquisition, activities or accounts of Tricontinental.
- (2) In subsection (1), *officer* in relation to Tricontinental or the State Bank includes—
- (a) a director, secretary, executive officer or employee;

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- (b) a person who acts, or has at any time acted, as banker, solicitor or auditor, or in any other capacity, for Tricontinental or the State Bank, as the case requires;
 - (c) a person who—
 - (i) has, or has at any time had, in his or her possession any property of Tricontinental or the State Bank, as the case requires; or
 - (ii) is indebted to Tricontinental or the State Bank, as the case requires; or
 - (iii) is capable of giving information concerning affairs of Tricontinental or the State Bank, as the case requires.

29 Continuing rights vest in the State

On the commencement of this Part, the continuing rights vest in the State of Victoria.

30 Exemption from stamp duty

No stamp duty is chargeable in respect of financial accommodation provided to Tricontinental in respect of any transaction declared by the Treasurer in writing to be a transaction that is in accordance with the Agreement.

31 Deed between State Bank and Tricontinental

The deeds dated 23 June 1989 and 21 September 1990 between the State Bank and Tricontinental

Holdings Limited have no further effect and all rights and liabilities under it are terminated.

32 Deed of guarantee and trust by State Bank

The deed of guarantee and trust dated 25 May 1989 between the State Bank and Perpetual Executors and Trustees Association of Australia Limited has no further effect and all rights and obligations under it are terminated.

33 Application of Vicfin Act

Tricontinental and its subsidiaries are participating authorities for the purposes of the **Victorian Public Authorities Finance Act 1984** as if they were public authorities which had given notice to and been accepted by the Victorian Public Authorities Finance Agency as participating authorities.

34 Statutory guarantees for Tricontinental

- (1) The due satisfaction of amounts payable by Tricontinental as a result of or in connection with liabilities, including contingent liabilities, of Tricontinental including, without limiting the generality of the foregoing, the payment of expenses of enforcing or obtaining or endeavouring to enforce or obtain such satisfaction, is guaranteed by the Government of Victoria.

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- (2) Subsection (1) does not apply in relation to any liabilities—
- (a) in respect of which a guarantee, indemnity or other support under section 35 is in force; or
 - (b) that (whether or not at the direction of the Treasurer) were declared in writing by Tricontinental before they were incurred to be liabilities to which subsection (1) would not apply.

35 Treasurer may execute certain guarantees etc.

- (1) At the request of a Tricontinental company, the Treasurer, on behalf of the Government of Victoria, by instrument on such terms and conditions (including payment of fees) as the Treasurer determines—
- (a) may guarantee, indemnify or otherwise support the performance, satisfaction or discharge of obligations or liabilities of the Tricontinental company; and
 - (b) may assume any obligation or liability of the Tricontinental company.
- (2) In subsection (1), *Tricontinental company* means Tricontinental Holdings Limited or a subsidiary.

36 Liability of Government

A guarantee under section 34 may be enforced under Part II of the **Crown Proceedings Act 1958**.

37 Appropriation for guarantee etc.

- (1) Any sums required by the Treasurer in fulfilling any liability arising under a guarantee, indemnity or other support by or on behalf of the Government of Victoria provided by or given under this Part shall be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.
- (2) Any sums received or recovered by the Treasurer from Tricontinental or otherwise in respect of sums paid by the Treasurer under a guarantee, indemnity or other support must be paid into the Consolidated Fund.

38 Immunity of directors and officers

- (1) No liability attaches to a person who is or was a director or officer of Tricontinental for any act or omission done or made, in good faith, and in carrying out, or purporting to carry out, the duties of his or her office as such a director or officer after the commencement of this section.
- (2) Any liability that, but for subsection (1), would attach to a director or officer of Tricontinental shall attach instead to Tricontinental Holdings Limited.

State Bank (Succession of Commonwealth Bank) Act 1990
No. 94 of 1990
Part 5—Consequential Repeals and Amendments

s. 39

PART 5—CONSEQUENTIAL REPEALS AND AMENDMENTS

39 Repeal of State Bank Act 1988

The State Bank Act 1988 is repealed.

S. 40
repealed by
No. 70/2013
s. 3(Sch. 1
item 52).

* * * * *

SCHEDULES

SCHEDULE 1

s. 7

Agreement for the Merger of State Bank of Victoria and
Commonwealth Bank of Australia

THIS AGREEMENT is made the eighth day of November 1990.

BETWEEN: **THE HONOURABLE THOMAS WILLIAM ROPER**
in his capacity as Treasurer for and on behalf of the State
of Victoria (the "Treasurer" which expression includes his
successors in office)

AND: **COMMONWEALTH BANK OF AUSTRALIA** a body
corporate established pursuant to section 27 of the
Commonwealth Banks Act 1959 ("CBA").

WHEREAS:

- A. The State Bank of Victoria is a body corporate in existence pursuant to the **State Bank Act 1988** and, pursuant to sub-section 6(2) of that Act, holds its property for and on behalf of the Crown.
- B. CBA is a body corporate in existence pursuant to the **Commonwealth Banks Act 1959**.
- C. By a letter dated 25 August 1990 (as amended by two letters dated 26 August 1990) (the "offer") CBA offered to merge with the Bank.
- D. By a letter dated 31 August 1990 the Treasurer accepted the offer of CBA to merge with the Bank.
- E. This Agreement is the formal contract referred to in the offer and the parties have entered into this Agreement to record the basis, the terms and the conditions upon which the merger is to be effected.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

State Bank (Succession of Commonwealth Bank) Act 1990
No. 94 of 1990

Sch. 1

"1990 Accounts" means the audited consolidated accounts of the SBV Group for the year ended 30 June 1990 marked as Exhibit "A" and initialled by the parties for identification;

"Accounts Date" means, in respect of the 1990 Accounts, 30 June 1990, and in respect of the Final Accounts, the Completion Date;

"Adjusted NTA" means the amount determined by Touche Ross & Co. in accordance with clause 3.6;

"Adjustment Date" means the date which is 14 days after the Treasurer and CBA receive notification from Touche Ross & Co. of the amount of the Adjusted NTA in accordance with clause 3.7;

"Assumption Agreement" means the agreement so entitled dated 26 June 1990 between the Bank and the CWA;

"Audit Instruction Letter" means a letter to Touche Ross & Co. in the form of the draft letter marked as Exhibit "B" and initialled by the parties for identification;

"Bank" means the State Bank of Victoria;

"Borrowing Agreement" means any agreement or instrument for the provision of Finance to any member of the SBV Group and includes any other agreement or instrument collateral or ancillary thereto;

"Business Day" means a day on which banks are open for business in Melbourne;

"Companies Code" means the **Companies (Victoria) Code** or any corresponding or like enactment (and a reference to any section or any other provision of the Companies Code includes a reference to the corresponding section or provision of any corresponding or like enactment);

"Completion Date" means the last day of the month in which falls the day which is seven Business Days after the day on which the last of the conditions

precedent referred to in clause 5.1 is satisfied or waived;

"CWA" means the Capital Works Authority established under the Order in Council made on 28 May 1985;

"Deposit" means the amount paid by CBA in accordance with the Stakeholders Agreement and all interest accrued thereon;

"Employee" means each person who is an employee of any member of the SBV Group;

"Encumbrance" means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation and includes, but is not limited to, any agreement to grant or create any of the above;

"Farrow Deed" means the Deed of Agreement and Indemnity dated 3 August 1990 between the Treasurer and the Bank and includes the Deed of Variation dated 20 August 1990;

"Final Accounts" means the consolidated balance sheet of the SBV Group as at the Completion Date and the consolidated profit and loss statement of the SBV Group for the period 1 July 1990 to the Completion Date in each case as prepared and audited in accordance with clause 3.4 and clause 3.5 but for the purposes of clause 3.6, clause 3.9 and clause 3.11 incorporating such alterations or adjustments (if any) as Touche Ross & Co. report pursuant to clause 3.8 as being necessary to enable them to issue a report in the terms required by the Audit Instruction Letter;

"Financial Indebtedness" means any debt or other monetary liability in respect of moneys borrowed or raised or any financial accommodation whatsoever including, but not limited to, under or in respect of any:

- (a) bill, bond, debenture, note, inscribed stock, certificate of deposit or similar instrument; or
- (b) acceptance, endorsement or discounting arrangement; or
- (c) Guarantee or other assumption of liability; or
- (d) finance or capital lease; or
- (e) deferred price (for more than 90 days) of any asset or service; or
- (f) obligation to deliver goods or provide services paid for in advance by any financier or in relation to any financing transaction; or
- (g) amount of capital and premium payable on or in connection with the redemption of any preference shares or any amount of purchase price payable for or in connection with the acquisition of redeemable preference shares,

and irrespective of whether the debt or liability:

- (h) is present or future; or
 - (i) is actual, prospective, contingent or otherwise; or
 - (j) is at any time ascertained or unascertained; or
 - (k) is owed or incurred alone or severally or jointly or both with any other person; or
 - (l) is owed to a person who originally provided such moneys or financial accommodation or to a person who acquired or succeeded to the benefit of that debt or liability; or
 - (m) comprises any combination of the above;
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and "**Financially Indebted**" and "**provision of Finance**" shall be construed accordingly;

"**Governmental Agency**" means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, instrumentality, tribunal, agency or entity anywhere in the world;

"**Guarantee**" means any guarantee, suretyship, indemnity, letter of credit, letter of comfort or any other legally binding obligation (whatever called and of whatever nature):

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services or otherwise) for the payment or discharge of; or

- (b) to indemnify any person against the consequences of default in the payment of; or

- (c) otherwise to be responsible for,

the Financial Indebtedness of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person;

"**Lending Agreement**" means any agreement or instrument for the provision of Finance by any member of the SBV Group and includes any other agreement or instrument collateral or ancillary thereto;

"**Material Contract**" means:

- (a) in respect of a Lending Agreement or Borrowing Agreement, a Lending Agreement or Borrowing Agreement involving the provision of Finance by or to a member of the SBV Group in an amount in excess of \$10 000 000; and
- (b) in respect of any other agreement, an agreement:
 - (i) which imposes on a member of the SBV Group an obligation to pay in aggregate more than \$10 000 000; or
 - (ii) a breach or default in respect of which, or termination of which, could have an adverse effect on the business or financial condition of a member of the SBV Group in excess of \$5 000 000;

"Reimbursement Agreement" means the Reimbursement Agreement dated 26 June 1990 between the Treasurer and the Bank;

"SBV Deed" means the Deed of Acquisition of Indebtedness or Interest or the Benefit Thereof dated 27 July 1990 and made between the Treasurer and the Bank and includes the Deed of Variation dated 23 August 1990;

"SBV Group" means the Bank and each of its Subsidiaries;

"SBV Multitrust" means the trust constituted by the Trust Deed between Tricontinental Management Limited, Tricontinental Holdings Limited and The Perpetual Executors and Trustees Association of Australia Limited dated 6 November 1985 (as amended by Supplemental Deeds dated 16 July 1987, 29 September 1987, 16 November 1987, 28 March 1988, 26 October 1989 and 5 April 1990);

"Stakeholders Agreement" means the agreement dated 14 September 1990 between the Treasurer and CBA;

"Subsidiaries" means subsidiaries (within the meaning of the Companies Code) of the Bank (as if the Bank were incorporated under the Companies Code) other than Tricontinental Holdings Limited and subsidiaries (within the meaning of the Companies Code) of Tricontinental Holdings Limited;

"Superannuation Funds" means each of the SBV Staff Superannuation Fund, the SBV External Superannuation Fund, the SBV Productivity Fund, the Australian Bank Superannuation Scheme, the Australian Bank Superannuation Fund and the Printing Industry Superannuation Fund;

"Tax" means any tax, payment in the nature of tax (including, without limitation, any payment under section 38(1)(a) of the **State Bank Act 1988**), levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Governmental Agency and includes, but is not limited to, any interest, penalty, charge, fee or any other amount imposed on or in respect of any of the above;

"Trico Deed" means the Deed of Agreement for the Acquisition of Indebtedness or the Benefit Thereof dated 22 February 1990 and made between Robert Allen Jolly in his capacity as Treasurer for and on behalf of the State of Victoria and Tricontinental Corporation Limited;

"Trico Group" means Tricontinental Holdings Limited and each of its subsidiaries (within the meaning of the Companies Code);

"Warranties" means the warranties set out in Schedule B and "Warranty" means each or any of them.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) any reference to any document or information given or provided or disclosed by the Treasurer or by a member of the SBV Group includes any document or information given or provided or disclosed by any of his or their professional advisors, consultants or agents;
- (b) any reference to any document or information given or provided or disclosed to CBA includes any document or information given or provided or disclosed to any of CBA's professional advisors, consultants or agents;
- (c) any reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (d) any reference to a document includes any agreement in writing or any certificate, notice, instrument or other document of any kind;
- (e) any reference to a "member of the SBV Group" is a reference to each of the Bank and its Subsidiaries;
- (f) any reference to a "member of the Trico Group" is a reference to each of Tricontinental Holdings Limited and its subsidiaries;
- (g) any reference to disclosure includes any matter known to CBA;
- (h) words importing the singular include the plural and vice-versa;
- (i) words importing a gender include each other gender;
- (j) any reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or

replaced by the same and any orders, regulations, instruments or other subordinate legislation made thereunder;

- (k) headings are for reference only and do not affect the interpretation of this Agreement;
- (l) references to this Agreement include the schedules to this Agreement;
- (m) all references to clauses, recitals and schedules are to clauses of and recitals and schedules to this Agreement;
- (n) all references to "\$" and "dollars" are, unless otherwise expressed, to the lawful currency for the time being of Australia;
- (o) all references to dates and times are to Melbourne time; and
- (p) except in relation to clause 2, where the day on or by which any thing is to be done pursuant to this Agreement is not a Business Day, that thing must be done on or by the next succeeding Business Day.

2. MERGER

The parties agree that with effect on the day immediately following the Completion Date:

- (a) all property and rights of the Bank, wherever located, vest in CBA;
 - (b) all liabilities of the Bank, wherever located, become liabilities of CBA;
 - (c) CBA is the successor in law of the Bank; and
 - (d) the Bank is dissolved,
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and in this clause 2, "property", "rights" and "liabilities" will have the meaning to be given thereto by the **State Bank (Succession of Commonwealth Bank) Act 1990**.

3. PRICE AND PAYMENT

- 3.1** CBA agrees to pay to the Treasurer a purchase price of \$1 600 000 000 subject to adjustment (if any) in accordance with clause 3.9.
- 3.2** It is acknowledged that CBA has paid a cash deposit in the amount and on the terms set out in the Stakeholders Agreement.
- 3.3** On the Completion Date CBA will pay to the Treasurer by bank cheque on account of the purchase price payable under clause 3.1 the sum of \$1 500 000 000 (less the amount payable by CBA to the Bank under clause 4.2) and will cause the Deposit to be paid or assigned to the Treasurer (of which \$100 000 000 will be taken to have been paid on account of the purchase price payable under clause 3.1).
- 3.4** On or prior to the Completion Date the Treasurer and CBA will to the extent of their respective powers:
- (a) procure the Bank to retain Touche Ross & Co. to audit the Final Accounts and to determine the amount of the Adjusted NTA; and
 - (b) execute and give to Touche Ross & Co. the Audit Instruction Letter and give to the officers and employees of CBA referred to in clause 3.5(a) a copy of the executed Audit Instruction Letter.
- 3.5** The Treasurer and CBA will to the extent of their respective powers procure that the Final Accounts will be:
- (a) prepared in accordance with this Agreement and the Audit Instruction Letter by appropriate officers and employees of CBA who immediately prior to the Completion Date were officers and employees of the

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- SBV Group responsible for the preparation of the accounts of the SBV Group;
- (b) signed by two persons who were directors of the Bank as at 30 June 1990 (or if there are no such persons able and willing to sign the Final Accounts any two, or if there is only one such person able and willing to sign that one person and any one, of the officers and employees referred to in clause 3.5(a) and stated by them (having regard to this Agreement and the Audit Instruction Letter) to present fairly the results of transactions of the SBV Group during the period from 1 July 1990 to the Completion Date and to sufficiently explain the financial position of the SBV Group at the Completion Date;
 - (c) audited by Touche Ross & Co. in accordance with this Agreement and the Audit Instruction Letter;
 - (d) prepared on the basis that no member of the Trico Group is a subsidiary of the Bank; and
 - (e) except as otherwise set out in this Agreement or the Audit Instruction Letter, prepared and audited in accordance with the same accounting principles and practices as were applied in the preparation and auditing of the 1990 Accounts.

3.6 The Adjusted NTA is:

- (a) the amount shown in the Final Accounts as representing Capital and Reserves of the SBV Group
plus
- (b) the amounts shown in the Final Accounts as representing provisions for deferred tax liabilities
minus
- (c) the amounts shown in the Final Accounts as representing future income tax benefits and goodwill.

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- 3.7** Upon completion of the audit of the Final Accounts, Touche Ross & Co. will issue to each of the Treasurer and CBA a report in the terms required by the Audit Instruction Letter and setting out the amount of the Adjusted NTA.
- 3.8** If upon completion of the audit of the Final Accounts, Touche Ross & Co. is not prepared to report in the terms required by the Audit Instruction Letter, Touche Ross & Co. will also report on such alterations and adjustments to the Final Accounts as are necessary to be made to enable Touche Ross & Co. to issue a report in those terms.
- 3.9** If Adjusted NTA is less than \$850 000 000, the Treasurer will pay to CBA on the Adjustment Date by bank cheque an amount equal to the difference between \$850 000 000 and Adjusted NTA.
- 3.10** The fees of Touche Ross & Co. for auditing the Final Accounts will be borne and paid by CBA.
- 3.11** In the event an error in the preparation or compilation of the Final Accounts affecting any money paid or payable under clause 3.9 or which would have been payable under that clause if that error had not been made is discovered and notified by either party to the other party after the date the auditor's report is received by the parties and before 31 December 1991, CBA will pay to the Treasurer or the Treasurer will pay to CBA (as the case requires) such amount as the parties agree or, in default of agreement within thirty days after notice is first given by one party to the other party, as the President for the time being of the Institute of Chartered Accountants or his nominee determines, reflects the amount of any overpayment or underpayment.
- 3.12** Any person required to make a determination in accordance with clause 3.11:
- (a) will act as an expert and not as an arbitrator;
 - (b) will be jointly instructed by the Treasurer and CBA in accordance with this Agreement;

(c) must not furnish to either the Treasurer or CBA any explanation or reasons as to the basis of his determination; and

(d) will be remunerated as to one half of his fees by the Treasurer and as to the other half of his fees by CBA,

and the determination of such person will be final and binding on the parties.

3.13 That part of the purchase price attributable to the Adjusted NTA will be apportioned between the various assets and liabilities making up the Adjusted NTA in accordance with the values ascribed thereto in or used in compiling the Final Accounts.

4. COMPLETION

4.1 Subject to clause 5, completion will take place on the Completion Date at the offices of the Treasurer, 1 Treasury Place, Melbourne.

4.2 On the Completion Date CBA (at the direction of the Treasurer) will pay to the Bank the amount of \$194 000 000 (being the consideration payable by the Treasurer for the acquisition of all of the rights referred to in clause 28 of the State Bank (Succession of Commonwealth Bank) Bill 1990 marked Exhibit "C" and initialled by the parties for identification and which amount will be deducted from the amount payable by CBA to the Treasurer pursuant to clause 3.3) at which time the parties will procure that if the same has not occurred prior to the Completion Date:

(a) the Bank will transfer to the Treasurer or his nominee all of the issued capital of Tricontinental Holdings Limited;

(b) the existing directors of Tricontinental Holdings Limited will retire and there will be appointed in place of such directors such persons as the Treasurer may nominate;

(c) SBV Futures Pty Limited and SBV Investment Management Limited will change their names to exclude "SBV"; and

(d) SBV Investment Management Limited will retire as manager of the SBV Multitrust and Commonwealth Management Services Limited will be appointed as manager in its stead.

4.3 (a) On or prior to the Completion Date the Treasurer will:

(i) negotiate and will procure that his nominee negotiates in good faith with CBA a facility agreement and any other agreements ancillary or collateral thereto for the provision of Finance by CBA to the nominee on the terms and conditions outlined in the term sheet marked as Exhibit "D" and initialled by the parties for identification;

(ii) enter into and will procure that the nominee enters into the facility agreement and other agreements referred to in paragraph (i);

(iii) negotiate in good faith with CBA a guarantee in respect of the facility agreement referred to in paragraph (i) and all securities issued thereunder on the terms and conditions outlined in the aforementioned term sheet;

(iv) enter into the guarantee referred to in paragraph (iii); and

(v) procure that all Financial Indebtedness of each member of the Trico Group to any member of the SBV Group other than the Financial Indebtedness under the facility agreement referred to in paragraph (i) is repaid or discharged in full.

(b) CBA will in good faith negotiate and enter into the facility agreement and other agreements referred to in clause 4.3(a)(i) and the guarantee referred to in clause 4.3(a)(iii) on or prior to the Completion Date and

CBA will subject to the terms of the facility agreement advance to the nominee on the Completion Date the sum demanded by the nominee up to \$2 300 000 000 pursuant to that facility agreement.

- 4.4** On or prior to the Completion Date the Treasurer will procure that:
- (a) the CWA will pay to the Bank such amount as would, if invested by the Bank on the Completion Date at the rates applying to the respective Obligations (as defined in the Assumption Agreement) for terms ending on the maturity date of the respective Obligations (as defined in the Assumption Agreement), result in the Bank receiving sufficient funds on such maturity date to enable the Bank or CBA as the successor of the Bank to pay out all Obligations (as defined in the Assumption Agreement) then assumed by the CWA pursuant to the Assumption Agreement;
 - (b) the Assumption Agreement is lawfully terminated; and
 - (c) neither the CWA nor any member of the SBV Group has any outstanding liability, responsibility or obligation under the Assumption Agreement or any other agreement, arrangement or understanding collateral or ancillary to the Assumption Agreement.
- 4.5** On or prior to the Completion Date, the Treasurer will procure that all assignments of Indebtedness (as defined in the Trico Deed) and declarations of trust in respect of such Indebtedness that have been made to any member of the SBV Group pursuant to the Trico Deed will be annulled or reassigned.
- 4.6** On or prior to the Completion Date the Treasurer will procure that the Bank and SBV Staff Superannuation Pty Ltd enters into a trust deed in the form of the draft trust deed marked as Exhibit "E" and initialled by the parties for

identification or such other form as may be agreed between the parties, whereupon CBA will execute that trust deed.

4.7 On or prior to the Completion Date the Treasurer will, and will procure that the Bank will, enter into a Deed amending the Farrow Deed in the form of the draft Deed marked Exhibit "F" and initialled by the parties for identification or such other form as may be agreed between the parties.

4.8 On or prior to the Completion Date the Treasurer will, and will procure that the relevant parties will, enter into a Deed of Variation in the form of the draft Deed marked Exhibit "G" and initialled by the parties for identification or such other form as may be agreed between the parties.

4.9 (a) On or prior to the Completion Date the Treasurer will:

(i) procure that the Bank will make a Past Interest Notice of Claim (as defined in the SBV Deed) for an amount of not less than \$51 700 000 and the Treasurer will pay to the Bank by bank cheque the amount the subject of that Past Interest Notice of Claim;

(ii) direct the Bank not to make any assignments or declare any trusts under clause 3.3 of the SBV Deed that might otherwise have been required as a consequence of the payment of that Past Interest Notice of Claim; and

(iii) release the Bank from any obligation under clause 6(a) of the SBV Deed that it might otherwise have had as a consequence of the payment of that Past Interest Notice of Claim;

and, notwithstanding the matters referred to in paragraphs (ii) and (iii) above or any other matter, the payment by the Treasurer will not operate as a discharge of any Indebtedness or Interest (as defined in the SBV Deed) and the Treasurer will treat the payment made pursuant to paragraph (i) above as having been made pursuant to and in accordance with his obligations under the SBV Deed.

- (b) Upon payment of the amount referred to in clause 4.9(a)(i), the Bank and CBA as the successor of the Bank will release the Treasurer from any obligations under the SBV Deed or Warranty 24 of this Agreement to make any further payments relating to the Interest on Indebtedness (as defined in the SBV Deed) accrued on or before 30 June 1990 the subject of that Past Interest Notice of Claim.

4.10 On or prior to the Completion Date the Treasurer will, and will procure that the Bank will, enter into a Deed of Release in the form of the draft Deed marked Exhibit "H" and initialled by the parties for identification or such other form as may be agreed between the parties.

5. CONDITIONS PRECEDENT

5.1 It is a condition precedent to completion that:

- (a) the Parliament of the State of Victoria has passed the legislation marked Exhibit "C" and initialled by the parties for identification without amendment of the name of the Bill or of sections 1, 2, 3, 5, 6, 7, 30, 31, 32, 34, 35, 36 or 37 or Part 3, or of any definition contained in section 4 of such legislation which affects those sections or that Part, of such legislation or any other amendment affecting the rights or obligations of the parties under this Agreement;
- (b) the Australian Parliament has passed all necessary legislation to:
- (i) give effect to the legislation referred to in clause 5.1(a);
 - (ii) permit CBA to issue to persons other than the Commonwealth of Australia and agencies or authorities of the Commonwealth of Australia capital of CBA;
 - (iii) implement the taxation compensation and reimbursement arrangements agreed between the Treasurer and the Commonwealth Treasurer

in connection with the merger of the Bank and CBA; and

- (iv) ensure that CBA is entitled to the benefit of any certificate granted to the Bank under section 128F of the Income Tax Assessment Act and that the succession of CBA to the assets, liabilities and commitments of the Bank will not be treated as a change in the ownership of, or in the interest of persons in, property for the purposes of section 59AA of that Act; and

- (c) the relevant parties have entered into the agreements and guarantee referred to in clause 4.3 and CBA has advanced all moneys pursuant thereto.

5.2 The conditions in clause 5.1(b)(ii) and (iv) are for the sole benefit of CBA and may be waived by it. The condition in clause 5.1(b)(iii) is for the sole benefit of the Treasurer and may be waived by him.

5.3 If a condition set out in clause 5.1 has not been satisfied or waived by 31 December 1990 either party may terminate this Agreement within seven days by notice in writing to the other party and any such termination will be a lawful termination for the purposes of the Stakeholders Agreement.

6. FUTURE OPERATION OF SBV

6.1 CBA will merge the staff of the Bank into CBA as soon as possible after the Completion Date and will treat all staff on their merits irrespective of origin.

6.2 CBA will offer the current Chief Executive Officer of the Bank an appropriate senior executive position with CBA.

6.3 CBA will aim to strengthen the retail, commercial and corporate operations of CBA in Victoria.

6.4 CBA will recommend to the Commonwealth Treasurer that the necessary steps be taken to permit the appointment to the

governing body of CBA or its successor of two extra persons and that, as soon as practicable after the Completion Date, the current Chairman of the Bank and one other person resident in Victoria be appointed to that governing body or its successor.

- 6.5** CBA undertakes that as soon as reasonably practicable after the Completion Date CBA will at its own expense do everything reasonably within its power to give every notice and obtain every consent and do every other thing required to be given or obtained or done under the Material Contracts referred to in Warranty 10.5 in order to avoid any breach or default under such Material Contracts provided that this clause does not require CBA to pay any money to any party to a Material Contract or accept any other liability or onerous obligation.

7. REPRESENTATIONS AND WARRANTIES OF THE TREASURER

- 7.1** Unless inconsistent with the context or the subject matter, the Treasurer gives the Warranties in favour of CBA:
- (a) as at the date of this Agreement;
 - (b) for each day up to the Completion Date; and
 - (c) as at the Completion Date.
- 7.2** The fact that CBA may know or ought reasonably to know that a Warranty is false or misleading, whether as a result of its due diligence, investigation or any other investigation made by CBA in respect of the business, undertaking and assets of the SBV Group or any knowledge as to the business, undertaking and assets of the SBV Group does not affect:
- (a) the Warranties; or
 - (b) the rights, powers, authorities or discretions of CBA if any Warranty is false or is misleading.
- 7.3** Each Warranty:

- (a) is to be construed independently and is not limited by reference to any other Warranty; and
- (b) survives the completion of this Agreement.

7.4 The Treasurer indemnifies CBA in respect of:

- (a) every cause of action (including every civil right to seek relief in a court of law) the subject of any claim, action, suit, prosecution, litigation, arbitration, proceeding or dispute to which CBA as the successor of the Bank or any member of the SBV Group is or may at any time be a party and which arises from any act done or omitted to be done on or prior to the Completion Date by any member of the SBV Group or any member of the Trico Group or any officer, employee, agent or contractor of any member of the SBV Group or of the Trico Group and any damage, loss, liability, cost, charge, expense, outgoing or payment (other than payments made by CBA or any member of the SBV Group without legal obligation to do so to any person in the nature of a claimant or plaintiff) which CBA as the successor of the Bank or any member of the SBV Group suffers, incurs or is liable for as a result thereof;
- (b) any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (other than payments made by CBA or any member of the SBV Group without legal obligation to do so to any person in the nature of a claimant or plaintiff) which CBA as the successor of the Bank or any member of the SBV Group suffers, incurs or is liable for in respect of:
 - (i) the Deed of Guarantee and Trust dated 25 May 1989 between the Bank and The Perpetual Executors and Trustees Association of Australia Limited guaranteeing the obligations of various members of the Trico Group;
 - (ii) the Deed Poll dated 23 June 1989 by the Bank indemnifying various members of the Trico

Group (as amended by the Supplemental Deed dated 21 September 1989);

- (iii) any act done or omitted to be done prior to the Completion Date by any member of the Trico Group or any officer, employee, agent or contractor of any member of the Trico Group;
- (iv) the Indemnity Agreement dated 14 September 1989 between Tricontinental Corporation Limited and the Bank marked as Exhibit "I" and initialled by the parties for identification and the Deed of Acknowledgement to be entered into on or prior to the Completion Date by Tricontinental Corporation Limited and the Bank in the form of the draft deed marked as Exhibit "J" and initialled by the parties for identification or such other form as may be agreed between the parties or the failure by Tricontinental Corporation Limited to comply with its obligations under that Indemnity Agreement or that Deed of Acknowledgement;
- (v) any fraudulent activities or unauthorised securities, currency or futures trading committed or carried out by any officer or employee of a member of the SBV Group prior to the Completion Date (and in this subparagraph (v) "employee" includes any trader who works full time in the business and under the control of a member of the SBV Group);
- (vi) the repudiation, revocation, rescission or termination of any Guarantee given by the Crown or any entity which represents the Crown in right of the State of Victoria or any member of the Trico Group in favour of or for the benefit of any member of the SBV Group (other than as contemplated by clause 8.2) or the failure by the Crown or any such entity or

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any such member of the Trico Group to comply with its obligations under any such Guarantee;

- (vii) Parts 4 or 5 or Schedule 3 of the Agreement for the Sale of Shares between Austech Ventures Limited and the Bank dated 10 January 1990 or Part 7 of the Agreement for Sale of Shares between the Crown in right of the State of Victoria and the Bank dated 30 June 1990; and

- (viii) any insurance provided by Housing Loan Insurance Corporation to the National Mortgage Market Corporation Limited being or becoming void, voidable or unenforceable.

7.5 Where by virtue of sections 160M(7), 160Z, 160ZC and 160ZO of the **Income Tax Assessment Act 1936** any amount received by CBA from the Treasurer under this clause 7 is included in the assessable income of CBA, the Treasurer shall pay such additional amounts as are necessary in order that the net amount received by CBA after the payment of Tax as a result thereof equals the amount which would have been received by CBA in the absence of such Tax.

7.6 Each indemnity in favour of CBA contained in this Agreement:

- (a) is a legal valid and binding obligation of the Treasurer;
- (b) may be enforced against the Treasurer by action at law, suit in equity or other action or proceeding and it will not be necessary or required in order to enforce the Treasurer's obligations and liabilities thereunder that CBA prosecutes or exhausts any right, remedy or claim or proceeds in any manner against any other person;

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- (c) is a continuing indemnity and will remain in full force and effect until all money owing (contingently or otherwise) under any indemnity has been paid in full;
 - (d) is and will be absolute and unconditional irrespective of any acts, omissions or circumstances which would or could (in the absence of this clause) adversely affect its validity;
 - (e) survives the completion or termination of this Agreement; and
 - (f) is given by the Treasurer as a principal debtor and not as a surety.

7.7 Notwithstanding any other provision of this Agreement, CBA may only claim under this clause 7 in respect of any matter:

- (a) to the extent it is not recoverable by CBA under a policy of insurance;
- (b) except in respect of a claim under Warranty 17.1 arising out of a failure to pay federal debits tax, to the extent it is not provided for in the Final Accounts or taken into account in the determination of the value of any assets included in the Final Accounts;
- (c) to the extent that it does not relate to an act done or omitted to be done by CBA or any member of the SBV Group after the Completion Date which contributes to a cause of action referred to in clause 7.4;
- (d) under Warranties 3, 10.1, 10.5, 13.1, 13.2 and 14 if all books, papers and records (including working papers and computer records) created or obtained by CBA or its professional advisors, consultants or agents during its due diligence review of the SBV Group which are material to the claim made under the Warranty have been retained by CBA or such advisors, consultants and agents and all reasonable access thereto is

provided within a reasonable time to the Treasurer and his professional advisors, consultants and agents; or

- (e) to the extent it does not relate to Finance provided by CBA or a member of the SBV Group after the Completion Date.

- 7.8**
- (a) Any claim made by CBA under this clause 7 will be made in writing and will describe in reasonable detail the nature of the claim and the amount claimed.
 - (b) Any amount payable by the Treasurer in respect of any claim made by CBA under this clause 7 is payable by the Treasurer within seven days of receiving a notice of claim pursuant to clause 7.8(a).
 - (c) Making a claim under clause 7.8(a) does not of itself prevent CBA making a further or different claim in respect of the same matter.
 - (d) Any moneys payable by the Treasurer pursuant to a claim made by CBA under this Agreement will be paid and received in diminution of the purchase price referred to in clause 3.1.

- 7.9** CBA will only be entitled to make any claim under this clause 7:

- (a) for a single claim with a monetary value of \$1 000 000 or more; or
- (b) for claims which are all of one class arising from substantially the same circumstances with an aggregate monetary value of \$1 000 000 or more.

- 7.10** CBA will not be entitled to make any claim under this clause 7 unless it has given notice (whether under clause 7.8 or otherwise) describing the nature or anticipated nature of the claim and, where possible, the amount of the claim:

- (a) in the case of a claim relating to Tax, within seven years of the Completion Date; and

- (b) in the case of any other claim, within five years of the Completion Date, and
- (c) in any case, within three months of CBA first becoming aware of the claim or anticipated nature of the claim or within three months of the Completion Date, whichever is the later.

7.11 For the purpose of clause 7.7(a), CBA will after the Completion Date maintain in relation to its business (including the SBV Group) insurance cover of the same type and of a level not less than the level of insurance cover maintained by the SBV Group on the Completion Date.

7.12 Notwithstanding any other provision of this Agreement, if the Treasurer is liable to CBA for a breach or breaches of Warranty 17 arising out of a failure to pay federal debits tax, his total liability in respect of that breach or those breaches will be the difference between:

- (a) the liability which would have applied in the absence of this clause 7.12; and
- (b) the lesser of \$33 000 000 and the excess (if any) of Adjusted NTA over \$850 000 000.

8. BORROWINGS AND NOTE ISSUES

8.1 The Treasurer agrees that so long as any of the borrowing and note issues and other agreements listed in Schedule A to this Agreement remain outstanding or any commitment or liability remains thereunder and CBA continues to indemnify the Treasurer and the Government of Victoria under clause 8.2(c) and that indemnity is guaranteed by the Commonwealth of Australia the Treasurer will procure that there remains in full force and effect all guarantees and indemnities relating to such issues and agreements given by the Treasurer or the Government of Victoria which are in force at the date of this Agreement.

8.2 CBA:

- (a) undertakes to do everything reasonably within its power (including the proffering of a guarantee or

indemnity by CBA and, to the extent within CBA's power, the Commonwealth of Australia, in substitution for the guarantees and indemnities given by the Treasurer or by the Government of Victoria referred to in clause 8.1) to procure as soon as reasonably practicable the absolute and unconditional release and discharge of the Treasurer and the Government of Victoria from all and any duties, responsibilities, obligations and liabilities whatsoever arising in connection with the guarantees and indemnities referred to in clause 8.1;

- (b) covenants not to issue any further securities or materially breach or be in default under the borrowing and note issues and agreements listed in Schedule A; and
- (c) indemnifies the Treasurer and the Government of Victoria against every claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (other than payments made by the Treasurer or the Government of Victoria without legal obligation to do so to any person in the nature of a claimant or plaintiff) which the Treasurer or the Government of Victoria suffers, incurs or is liable for after the Completion Date under or pursuant to the guarantees and indemnities referred to in clause 8.1.

8.3 The indemnity in clause 8.2(c):

- (a) is a legal valid and binding obligation of CBA;
 - (b) may be enforced against CBA by action at law, suit in equity or other action or proceeding and it will not be necessary or required in order to enforce CBA's obligations and liabilities thereunder that the Treasurer prosecutes or exhausts any right, remedy or claim or proceeds in any manner against any other person;
 - (c) is a continuing indemnity and will remain in full force and effect until all money owing (contingently or otherwise) under the indemnity has been paid in full;
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- (d) is and will be absolute and unconditional irrespective of any acts, omissions or circumstances which would or could (in the absence of this clause) adversely affect its validity;
- (e) survives the completion or termination of this Agreement;
- (f) is given by CBA as a principal debtor and not as a surety; and
- (g) does not apply to the deeds referred to in the list marked as Exhibit "K" and initialled by the parties for identification.

- 8.4** (a) Any claim made by the Treasurer under the indemnity in clause 8.2(c) will be made in writing and will describe in reasonable detail the nature of the claim and the amount claimed.
- (b) Any amount payable by CBA in respect of any claim made by the Treasurer under the indemnity in clause 8.2(c) is payable by CBA within seven days of receiving a notice of claim pursuant to clause 8.4(a).

9. VICTORIAN TAXES

The Treasurer agrees to bear any Victorian stamp duty or other Victorian taxes chargeable under any Act in respect of anything done under the **State Bank (Succession of Commonwealth Bank) Act 1990** or this Agreement or in respect of any act or transaction connected with or necessary to be done by reason of the **State Bank (Succession of Commonwealth Bank) Act 1990** or this Agreement, including a transaction entered into or an instrument made, executed, lodged or given.

10. USE OF STATE BANK OF VICTORIA NAME

The Treasurer will do all acts and things and execute all documents or procure the doing or execution of such acts things and documents as are within his power to do or procure and are

necessary so that CBA will have the right after the Completion Date to use the name "State Bank of Victoria" and all relevant trade, business and brand names and marks and logos used by the Bank.

11. OPERATION OF THE BANK PRIOR TO COMPLETION

11.1 To the end of the Completion Date, the Treasurer will use his best endeavours to procure that the business of the Bank and each Subsidiary is carried out properly and in its ordinary course and without limiting the foregoing that the Bank and each Subsidiary will not, without the prior written consent of CBA (which consent CBA covenants will not be withheld unreasonably), do any of the following:

- (a) change its policy with respect to investment or trading securities;
- (b) incur any single capital expenditure commitment of more than \$1 000 000;
- (c) enter into any Lending Agreement involving the provision of Finance in an amount in excess of \$5 000 000 (not including any rollover pursuant to an existing Lending Agreement);
- (d) in relation to any existing Lending Agreement involving the provision of Finance in an amount in excess of \$5 000 000:
 - (i) amend or vary in any material way such Lending Agreement;
 - (ii) vary or release any security for any such Lending Agreement;
 - (iii) waive any default in respect of such Lending Agreement; or

- (iv) increase any limit applicable to such Lending Agreement;
- (e) vary in any material way any Borrowing Agreement;
- (f) employ any new person who would on commencement of employment receive, or terminate any Employee who currently receives, a salary package (inclusive of benefits) with an aggregate value in excess of \$100 000 per annum or, without limiting the foregoing, make or terminate any senior appointment;
- (g) change the terms and conditions of employment applicable to Employees generally or a significant number of them;
- (h) change its lending, deposit taking or foreign exchange activities or policies;
- (i) introduce any new product or service;
- (j) cease to offer any product or service offered as at the date of this Agreement;
- (k) open any new branch or office or close any branch or office in operation as at the date of this Agreement;
- (l) maintain any net open position with respect to foreign exchange exposures which is not both:
 - (i) within existing approved trading limits; and
 - (ii) subject to mark-to-market revaluation processes with any resulting profit or loss reflected in the accounts of the relevant member of the SBV Group;
- (m) maintain any uncovered interest rate position in excess of the structural balance sheet mismatch inherent in normal bank activities which is not both:
 - (i) within existing approved trading limits; and
 - (ii) subject to mark-to-market revaluation processes with any resulting profit or loss reflected in the

accounts of the relevant member of the SBV Group;

- (n) allow holdings of assets the subject of the "Prime Assets Ratio" used by the Reserve Bank of Australia to be less than \$150 million in excess of the minimum requirement of the Reserve Bank of Australia;
- (o) increase any delegated authority or trading exposure limit granted to any person or applicable to any position within a member of the SBV Group including, without limitation, any discretionary lending authority;
- (p) change any accounting policies or practices of any member of the SBV Group;
- (q) raise any capital which would be tier 1 or tier 2 capital for the purposes of the Reserve Bank of Australia's prudential guidelines;
- (r) permit the shares in, or assets of, SBV Futures Limited (or any substantial portion of either of them) to be sold or disposed of;
- (s) create, acquire or revalue any brand names, copyright, franchises, intellectual property, licences, mastheads, patents or trademarks;
- (t) except for the disposal by the Bank of Tricontinental Holdings Limited contemplated by clause 4.2(a) of this Agreement, acquire or incorporate or dispose of any subsidiary;
- (u) issue any shares or securities convertible to shares or incur any obligation to do so;
- (v) amend or waive any rights under, or agree to amend or waive any rights under, the Assumption Agreement, the Reimbursement Agreement, the SBV Deed, the Trico Deed or the deeds and agreements referred to in Warranty 21.2 except as expressly required or permitted by this Agreement;

- (w) serve any Notice of Claim (as defined in the SBV Deed) on the Treasurer other than the Past Interest Notice of Claim contemplated by clause 4.9; or
- (x) pay or incur a liability to pay any amount under section 38(1)(d) of the **State Bank Act 1988** or pay, make or declare any dividend or other distribution of profits or capital.

11.2 The Treasurer will use his best endeavours to procure that at all times prior to the Completion Date:

- (a) CBA will have the right to appoint an observer to attend all meetings of the Board of Directors of the Bank;
- (b) CBA will receive all notices of such meetings, board papers or other documents which and at the times at which CBA would be entitled to receive them if it were a natural person and a member of the Board of Directors of the Bank;
- (c) CBA will receive copies of all returns or other documents provided to the Reserve Bank of Australia by the Bank or any Subsidiary;
- (d) the Bank will—
 - (i) provide every reasonable assistance to CBA in conducting its due diligence review of the SBV Group; and
 - (ii) cause the Subsidiaries to provide every reasonable assistance to CBA in conducting its due diligence review of the SBV Group; and
- (e) CBA will have full access to all computer facilities and development operations, and the right to examine computing operations, of the Bank and each Subsidiary.

11.3 The parties acknowledge that prior to the date of this Agreement, CBA commenced a due diligence review of the

SBV Group and that it is intended that this review will continue until the Completion Date.

12. DEFENCE OF CLAIMS

- 12.1** Where, pursuant to the terms of this Agreement, a party (the "Indemnifying Party") indemnifies the other party (the "Indemnified Party") against any action, suit or proceeding being brought against the Indemnified Party, the following clauses 12.2 to 12.5 apply.
- 12.2** Within 10 Business Days of being notified or becoming aware of the institution of any action, suit or proceeding which may give rise to a claim under the relevant indemnity, the Indemnified Party must notify the Indemnifying Party of that fact and give to the Indemnifying Party (so far as it is able to do so) full details of such action, suit or proceeding.
- 12.3** The Indemnified Party must not agree to arbitrate any claim or pay, settle or compromise such action, suit or proceeding without the consent (not to be unreasonably withheld) of the Indemnifying Party within 20 Business Days of the giving of the notice referred to in clause 12.2 nor at any time thereafter provided within that 20 Business Days, the Indemnifying Party has notified the Indemnified Party that it intends to defend the relevant action, suit or proceeding and has commenced such defence or has taken such steps as are reasonably open to it to do so.
- 12.4** Any defence of an action, suit or proceeding by the Indemnifying Party pursuant to clause 12.3 will be conducted (if necessary) in the name of the Indemnified Party but in accordance with the reasonable directions and at the expense of the Indemnifying Party. The Indemnifying Party in defending an action, suit or proceeding will have regard to, and not unreasonably pursue a course of action which would jeopardise, any ongoing business relationships, reputation or manpower requirements of the Indemnified Party.
- 12.5** The Indemnified Party will at the expense of the Indemnifying Party (which expense will include executive time at usual hourly rates) render or cause to be rendered to
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the Indemnifying Party such reasonable assistance as the Indemnifying Party may reasonably require in connection with such defence including, without limiting the generality of the foregoing, taking such action and providing such witnesses and documentary or other evidence as the Indemnifying Party may reasonably request to avoid, dispute, resist, appeal, compromise or defend the action, suit or proceeding and affording the Indemnifying Party and his lawyers and other representatives all reasonable access to all relevant books, records, files and documents and to appropriate personnel of the Indemnified Party for the purposes of such defence.

13. COSTS

Each party will bear its own costs in relation to the preparation and execution of this Agreement.

14. INTEREST

Any amount payable under this Agreement by one party to the other and not paid timeously will bear interest on the amount outstanding from time to time at the same rate as is payable from time to time on a judgement for debt entered in the Supreme Court of Victoria.

15. MERGER

As to any of the provisions of this Agreement remaining to be performed or capable of having effect after the Completion Date, this Agreement will remain in full force and effect notwithstanding completion.

16. ASSIGNMENT

Neither party to this Agreement will assign or purport to assign any of that party's rights under this Agreement without the prior written consent of the other party (which consent may be withheld at the sole discretion of that other party).

17. FURTHER ASSURANCES

17.1 Each party agrees to do all such things and execute all such deeds, instruments, transfers or other documents as may be

reasonably necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

- 17.2** The Treasurer up to the Completion Date and CBA after the Completion Date undertakes to use his or its best endeavours to procure that each member of the SBV Group does all things and executes all deeds, instruments, transfers or other documents as may be reasonably necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

18. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes all prior agreements and understandings of the parties in connection with it.

19. WAIVER

- 19.1** Either party by notice to the other party may waive its rights in respect of the strict and literal performance of or compliance with any provision, condition or requirement herein in the manner and for the time set out in the notice.
- 19.2** No waiver by either party of any default in the strict and literal performance of or compliance with any provision, condition or requirement herein will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement herein nor to be a waiver of or in any manner release either party from strict compliance with any provision, condition or requirement in the future nor will any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter or of any other right.

20. NOTICES

- 20.1** Any demand, consent, notice or other communication ("notice") authorised or required to be made hereunder will be in writing and may be given by facsimile, post or hand to

a party addressed as follows or as otherwise notified to the other party:

To the Treasurer: 4th Floor,
1 Treasury Place,
MELBOURNE. VIC. 3002.
Facsimile: (03) 650 5421

To CBA: 2nd Floor,
48 Martin Place,
SYDNEY. N.S.W. 2000.
Attention: The Secretary
Facsimile: (02) 221 4827

20.2 A notice:

- (a) sent by prepaid registered or certified post (airmail, if appropriate) will be deemed to have been given (where posted to an address in the same country) on the Business Day following the day on which it was posted or (where posted to an address in another country) on the seventh Business Day following the day on which it was posted;
- (b) transmitted by facsimile or delivered by hand before 5.00 p.m. on a Business Day will be deemed to have been given on that day, or in any other case of facsimile transmission or hand delivery, will be deemed to have been given on the Business Day following the day of transmission or delivery.

21. GOVERNING LAW

This Agreement is governed by and will be construed in accordance with the laws of the State of Victoria, Australia and each party hereby irrevocably submits to the jurisdiction of the courts of that State and all courts of appeal therefrom.

IN WITNESS whereof the parties have executed this Agreement on the day and year first above written.

**SIGNED by THE HONOURABLE
THOMAS WILLIAM ROPER** in his
capacity as Treasurer of the State of
Victoria in the presence of:

T. W. ROPER

E. ELDRIDGE
.....

**THE COMMON SEAL of
COMMONWEALTH BANK OF
AUSTRALIA** was hereunto affixed in
accordance with the provisions of the
Commonwealth Banks Act 1959 in the
presence of:

L.S.

D. SANDERS
.....

SCHEDULE A
(Debt instruments issued or guaranteed by the Bank and swap agreements—Clause 8.1)

<i>Issue Amount</i>	<i>Description of Amount</i>	<i>Maturity Date</i>
USD 250 million	Guaranteed Undated Variable Rate Capital Notes	—
USD 125 million	Guaranteed Ten Year Extendible Floating Rate Capital Notes	June 1999
AUD 300 million	Extendible Floating Rate Stock	22 December 2004
USD 100 million	9 ¹ / ₄ % Guaranteed Notes	26 July 1993
AUD 75 million	15 ¹ / ₄ % Guaranteed Notes	14 February 1991
AUD 50 million	15 ¹ / ₂ % Guaranteed Notes	13 July 1994
JPY 10 billion	5 ³ / ₈ % Guaranteed Notes	18 October 1991
AUD 350 million	12% SBV Bonds	15 March 1993
GBP 20 million	11·35% Note	14 April 1994
AUD 75 million	12 ¹ / ₂ % SBV Bonds	15 February 1995
JPY 10 billion	7% Guaranteed Bear Notes	21 November 1992
GBP 75 million	11 ¹ / ₂ % Guaranteed Notes	21 August 1994
CAD 75 million	11% Guaranteed Notes	26 May 1992
USD 20 million	Loan Agreement dated 24/11/88	25 November 1993
AUD 100 million	12 ¹ / ₂ % SBV Bonds issued 12/7/90	15 October 1996
AUD 252 560 164	Zero Coupon Inscribed Stock issued 29/12/89	30 April 1992
AUD 22 572 816	Zero Coupon Inscribed Stock issued 29/12/89	30 April 1991
AUD 200 million	12 month deposit facility issued 5/8/90	2 August 1991
AUD 15 million	12 ¹ / ₂ % Term Deposit issued 8/12/88	1 June 1997

State Bank (Succession of Commonwealth Bank) Act 1990
No. 94 of 1990

<i>Issue Amount</i>	<i>Description of Amount</i>	<i>Maturity Date</i>
AUD 3·675 million	Zero Coupon Deposit issued 27/12/89	14 March 1995
AUD 3 million	Fixed Deposits issued 1/12/89	AUD 1 million on 3 December 1990 AUD 2 million on 2 December 1991
USD 250 million	Loan Agreement dated 8/4/86 with S.B. Victoria Funding Inc., Delaware	Various
USD 250 million	Multi-currency Euro Commercial Paper/Euro Certificate of Deposit Program—London	Various
USD 250 million	Multi-currency London Certificates of Deposit	Various
AUD 500 million	Euro Commercial Paper Program—Hong Kong	Various
USD 125 million	Guaranteed Undated* Capital Notes	—
USD 125 million	8½% Guaranteed Notes*	18 June 1993
USD 300 million	Guaranteed Floating Rate Notes*	23 July 1996
JPY 5 billion	Loan Agreement dated 24/6/86*	27 June 1991
JPY 3·3 billion	Loan Agreement dated 14/7/86*	24 July 1991
JPY 3 billion	Loan Agreement dated 30/7/87*	31 July 1992
JPY 4 billion	Loan Agreement dated 28/9/87*	29 September 1997

State Bank (Succession of Commonwealth Bank) Act 1990
No. 94 of 1990

Sch. 1

<i>Issue Amount</i>	<i>Description of Amount</i>	<i>Maturity Date</i>
JPY 4 billion	Loan Agreement dated 28/9/87*	30 September 1997
USD 68 704 913	8% Guaranteed Rainbow Notes*	27 July 1992
JPY 15 billion	7% Guaranteed Bear Notes*	10 May 1992
JPY 20 billion	Guaranteed Stepped-up Coupon Notes*	10 December 1991
JPY 10 billion	5% Guaranteed Notes*	12 March 1992
JPY 30 billion	4.75% Guaranteed Notes*	7 July 1992

* Contractual guarantee

Swap agreements

1. Interest Rate Exchange Agreement dated 24 November 1988 between the Bank and The Long-Term Credit Bank of Japan, Limited.
2. Interest Rate and Currency Exchange Agreement dated 25 July 1988 between the Commissioners of the State Bank of Victoria and The Fuji Bank, Limited, Tokyo.
3. Interest Rate and Currency Exchange Agreement dated 13 April 1989 between the Bank and Baring Brothers & Co., Limited.

SCHEDULE B

(Warranties—Clause 1.1, Clause 7)

1. Consents and Authority

The Treasurer has full power and authority to enter into and, subject to the satisfaction of the conditions set out in clause 5.1(a) of this Agreement, perform his obligations under this Agreement and can do so (except where this Agreement specifically requires or contemplates such consent) without the consent of any other person.

2. Conduct of Business

- 2.1** Each member of the SBV Group has conducted its business and affairs in accordance with its memorandum and articles of association and any other constituent documents.
- 2.2** Each member of the SBV Group has obtained all authorisations, licences, permits and registrations required under any legislation by that member to conduct its business and to own and use its assets.
- 2.3** There is nothing that might materially prejudice the continuance, renewal, issue or extension of the authorisations, licences, permits and registrations required by any member of the SBV Group to conduct its business and to own and use its assets in favour of CBA or a subsidiary of CBA.

3. Information

- 3.1** All material information given by or on behalf of the Treasurer or any member of the SBV Group to CBA in respect of any member of the SBV Group is accurate and not misleading.
- 3.2** Any copy of any document provided by the Treasurer or any member of the SBV Group to CBA in the course of the due diligence review conducted by CBA is a complete and accurate copy of the original document of which it purports to be a copy.

4. 1990 Accounts

- 4.1** The 1990 Accounts have been prepared in accordance with the same accounting principles (so far as applicable) as were applied in 1989 to the respective annual accounts of the members of the SBV Group.
- 4.2** Save for the provisions for bad and doubtful debts and any capitalised computer software and development costs, the 1990 Accounts present fairly the financial position and the assets and liabilities of the SBV Group at the Accounts Date and the income, expenses and results of the operations of the

SBV Group for the financial period ended on the Accounts Date.

5. Position since 30 June 1990

Between 30 June 1990 and the date of this Agreement:

- (a) the business of each member of the SBV Group has been carried on in its ordinary course of business;
- (b) no member of the SBV Group has disposed of or become party to any option in respect of the disposition of any assets except in its ordinary course of business;
- (c) no member of the SBV Group has acquired or become party to any option in respect of the acquisition of any asset except in its ordinary course of business;
- (d) no member of the SBV Group has incurred any liability (including any contingent liability) except in its ordinary course of business;
- (e) no member of the SBV Group has created, acquired or revalued any brand names, copyright, franchises, intellectual property, licences, mastheads, patents or trademarks;
- (f) no member of the SBV Group has acquired or incorporated or disposed of any subsidiary;
- (g) no member of the SBV Group has issued any shares or securities convertible to shares or incurred any obligation to do so;
- (h) except as known by or disclosed to CBA prior to the date of this Agreement, no member of the SBV Group has amended or waived any rights under, or agreed to amend or waive any rights under, the Assumption Agreement, the Reimbursement Agreement, the SBV Deed, the Trico Deed or the deeds and agreements referred to in Warranty 21.2; and
- (i) the Bank has not paid or incurred a liability to pay any amount under section 38(1)(d) of the **State Bank Act**

1988 nor paid, made or declared any dividend or other distribution of profits or capital.

6. Title to Assets

- 6.1** All industrial and intellectual property, premises, sites and dwellings, fixtures and fittings, computers, motor cars and furniture used in the business of a member of the SBV Group are owned by that member of the SBV Group or used by that member of the SBV Group pursuant to a lawful, valid, binding and enforceable right to do so.
- 6.2** All premises, sites and dwellings, fixtures and fittings, computers, motor cars and furniture the value of which is included in the Final Accounts as fixed assets will be owned by a member of the SBV Group at the Completion Date free from any mortgage, charge, pledge, lien (excluding liens arising by operation of law) or similar security.

7. Intellectual Property Rights

No use of any business names or industrial or intellectual property right owned by or used in the business of a member of the SBV Group breaches or infringes against any industrial or intellectual or other property right of any other person.

8. Properties

- 8.1** Each member of the SBV Group holds all easements, rights, interests and privileges in respect of each site, dwelling or premises in or on which it conducts business which are necessary to the conduct of that business as presently conducted.
- 8.2** No member of the SBV Group has prior to the date of this Agreement received notice from any Governmental Agency or from any third party in respect of any site, dwelling or premises owned by or used in the business of a member of the SBV Group under which the person receiving the notice is obliged to undertake work or make expenditure on or in respect of such site, dwelling or premises.

8.3 All works carried out by or on behalf of any member of the SBV Group in relation to any site, dwelling or premises owned by or used in the business of that member of the SBV Group have been carried out in accordance with that member's legal obligations to all relevant Government Agencies and, where applicable, any landlord or tenant.

9. Encumbrances in Favour of SBV Group

9.1 Each Lending Agreement, Guarantee or Encumbrance (or document which purports to be a Lending Agreement, Guarantee or Encumbrance) which is in favour of or for the benefit of any member of the SBV Group (including, without limitation, Lending Agreements, Guarantees or Encumbrances to which a member of the SBV Group may succeed by subrogation) is a binding obligation of each party thereto valid and, subject to discretions applying in respect of equitable remedies, enforceable according to its terms.

9.2 The grantor of each Encumbrance referred to in Warranty 9.1 had good title to all property (including, without limitation, real property) to which the Encumbrance relates at the time of granting that Encumbrance.

10. Contracts

10.1 All Material Contracts have been disclosed to CBA prior to the date of this Agreement.

10.2 No member of the SBV Group is subject to any agreement which restricts its freedom to engage in the normal course of its business.

10.3 No agreement to which any member of the SBV Group is a party is liable to be rescinded or terminated by any other party to the agreement by reason of the breach or default of a member of the SBV Group.

10.4 No payment made to or for the benefit of any member of the SBV Group before the Completion Date is liable to be returned or refunded after the Completion Date under any law relating to preferences, void or voidable dispositions or

transactions or similar laws relating to insolvency or bankruptcy in any jurisdiction.

10.5 No member of the SBV Group is a party to, or derives any benefit under, any Material Contract (including, without limitation, any Material Contract that is a Borrowing Agreement, Lending Agreement, Guarantee or Encumbrance) not disclosed to CBA under which any third party is entitled as a result of the transactions contemplated by this Agreement (including, without limitation, the universal succession of CBA to the assets, liabilities and commitments of the Bank):

- (a) to terminate, vary or modify the agreement; or
- (b) to require the payment or repayment of any Financial Indebtedness or of any amount that would not have been payable in the absence of such transactions;

or which requires the giving of any notice or the receipt of any consent in respect of such transactions in order to avoid any breach or default thereunder.

11. Employees

No member of the SBV Group is liable to pay to, on behalf of or in respect of any person who immediately prior to the Completion Date was an ex-Employee any retirement gratuity or similar benefit or any damages or compensation for loss of office or employment or unfair or wrongful dismissal not provided for in the Final Accounts.

12. Superannuation Schemes

12.1 There is no scheme to which a member of the SBV Group contributes or is liable to contribute which provides the Employees or their dependents with pensions, annuities or lump sum payments other than a Superannuation Fund.

12.2 Each of the SBV Staff Superannuation Fund and Australian Bank Superannuation Fund is and has at all relevant times:

- (a) complied with all applicable laws; and

- (b) been a "complying superannuation fund" (within the meaning of the Income Tax Assessment Act) and receives the maximum concessional tax treatment under that Act.

13. Unions

- 13.1** No member of the SBV Group is a party to any agreement with a union or industrial organisation in respect of the Employees outside the guidelines of the Australian Industrial Relations Commission other than as known by or disclosed to CBA prior to the date of this Agreement.
- 13.2** No industrial awards or agreements apply to any Employee other than as known by or disclosed to CBA prior to the date of this Agreement.
- 13.3** Each member of the SBV Group has complied with its obligations under any agreement, statute or industrial award in respect of the Employees up to the Completion Date.

14. Encumbrances by SBV Group

Other than as known by or disclosed to CBA, no member of the SBV Group has granted or created, or agreed to grant or create, any mortgage, charge, pledge, lien (excluding liens arising by operation of law) or similar security over any of its assets or declared any trust of any such asset.

15. Solvency

- 15.1** No member of the SBV Group has gone into liquidation or passed a winding-up resolution or received a notice under section 459 of the Companies Code.
- 15.2** No petition or other process for winding-up has been presented or threatened against any member of the SBV Group and there are no circumstances justifying such a petition or other process.
- 15.3** No writ of execution has issued against any member of the SBV Group or any property of such a member and there are no circumstances justifying such a writ.

15.4 No receiver or receiver and manager of any part of the undertaking or assets of any member of the SBV Group has been appointed or is threatened or expected to be appointed and there are no circumstances justifying such an appointment.

16. Corporate Records

In respect of the accounts, books, ledgers and financial and other records of each member of the SBV Group, the Bank has complied with section 45(1) of the **State Bank Act 1988**.

17. Taxes

17.1 Any Tax (other than federal debits tax) which is due and payable by a member of the SBV Group on or before the Completion Date or which has accrued prior to the Completion Date has been paid or fully provided for in the Final Accounts and any federal debits tax which is due and payable by a member of the SBV Group on or before the Completion Date or which has accrued prior to the Completion Date has been paid.

17.2 All Tax which although due and payable by another person should in accordance with applicable legal requirements have been withheld or collected by any member of the SBV Group has been duly withheld or collected.

17.3 Australian Bank Limited has not had a taxable income in any of the years ending 30 June 1988, 30 June 1989 or 30 June 1990.

17.4 The after tax yield to any member of the SBV Group pursuant to any Finance provided by that member of the SBV Group to or for the benefit of the party referred to in the letter dated 8 November 1990 from the legal advisers to CBA to the legal adviser to the Treasurer will not be less than the after tax yield assumed at the time such Finance was provided as a result of:

- (a) the Tax assumptions upon which the Finance was structured being incorrect or not in accordance with

relevant Tax law or the practice of any relevant
Governmental Agency at that time; or

- (b) the relevant structure not being in accordance with the structure set out in any ruling or opinion from any relevant Governmental Agency obtained by a member of the SBV Group in connection with the Finance.

18. NSC

No member of the SBV Group is in any way liable or responsible for, or has any obligations (including, without limitation, pursuant to any Guarantee) in respect of, the National Safety Council of Australia (Victorian Division) (in liquidation) or any of its Financial Indebtedness or activities or operations.

19. Trico

19.1 Subject to the parties entering into the facility agreement referred to in clause 4.3 and except in relation to the facilities to be described in the Schedule to the Deed of Acknowledgement referred to in clause 7.4(b)(iv), at the Completion Date there will be no agreements, arrangements or understandings still in force to which any member of the SBV Group is a party pursuant to which:

- (a) any member of the SBV Group has assumed or agreed to assume any obligations of or for the benefit of any member of the Trico Group (whether actual or contingent) or any member of the Trico Group has given a similar undertaking in respect of a member of the SBV Group;
- (b) any member of the SBV Group is or may become Financially Indebted or owes or may owe any obligation to any member of the Trico Group or any member of the Trico Group is or may become Financially Indebted or owes or may owe any obligation to any member of the SBV Group;
- (c) monies have been or may be paid or assets have been or may be transferred to any member of the SBV Group by any member of the Trico Group, or to any

member of the Trico Group by any member of the SBV Group; or

- (d) a member of the SBV Group has given or agreed to give a Guarantee for the benefit of or in respect of any member of the Trico Group.

19.2 As at the Completion Date, the Reimbursement Agreement will have been lawfully terminated and no member of the SBV Group has or will have any outstanding liability, responsibility or obligation under the Reimbursement Agreement or any other agreement, arrangement or understanding collateral or ancillary to the Reimbursement Agreement.

19.3 Scrip which, along with other assets, at the date of this Agreement has been pledged as security to members of the Trico Group and the Bank in connection with the provision of Finance by members of the Trico Group and the Bank pursuant to the facilities referred to in the letter dated 8 November 1990 from the legal advisers to CBA to the legal adviser to the Treasurer will, if realised, realise not less than \$20 000 000 and 64% of the amount realised will be available to secure repayment to CBA, as successor of the Bank, of Financial Indebtedness under such facilities.

20. SBV Deed

20.1 Save for the Past Interest Notice of Claim contemplated by clause 4.9, there have been no notices of claim under clause 2.1 of the SBV Deed nor any assignments or declarations of trust under or in respect of clause 3.3 of the SBV Deed.

20.2 No agreements have been reached between the Treasurer and the Bank in relation to the matters referred to in clause 3.7 of the SBV Deed.

20.3 There have been no notifications given by the Treasurer to the Bank, and no transfers of any assets to the Bank nor any payments made by the Bank to any Trico Group Member (as defined in the SBV Deed), under or in respect of clause 3.8 of the SBV Deed.

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- 20.4** No obligations of the Bank have been assumed under clause 3.9 of the SBV Deed.
- 20.5** The SBV Deed is a legal and binding obligation of the Crown in right of the State of Victoria and is valid and, subject to discretions applying in respect of equitable remedies, enforceable according to its terms.
- 20.6** The Deed of Release to be entered into on or prior to the Completion Date by the Treasurer and the Bank in the form of the draft deed marked as Exhibit "H" and initialled by the parties for identification or such other form as may be agreed between the parties will be a legal and binding obligation of the Crown in right of the State of Victoria and will be valid and, subject to discretions applying in respect of equitable remedies, enforceable according to its terms.

21. Farrow

- 21.1** The Farrow Deed is a legal and binding obligation of the Crown in the right of the State of Victoria and is valid and, subject to discretions applying in respect of equitable remedies, enforceable according to its terms.
- 21.2** Other than the Farrow Deed and the agreements, arrangements and understandings arising out of or contemplated by the Farrow Deed, the Deed of Agreement dated 3 August 1990 between Pyramid Building Society, Geelong Building Society, Countrywide Building Society, the Treasurer and the Bank and the Heads of Agreement dated 21 August 1990 between the Administrator of Pyramid Building Society, Geelong Building Society and Countrywide Building Society, various creditors of those Building Societies (including the Bank) and the State of Victoria relating to a secured creditors' moratorium, there is no agreement, arrangement or understanding to which any member of the SBV Group is a party under which that member is or might become under any obligation in respect of the Pyramid Building Society, Geelong Building Society, Countrywide Building Society or Farrow Corporation Pty. Ltd. or any of their depositors or investors other than in its ordinary course of business.

21.3 No moneys or other property (whether real or personal) have been tendered to or accepted by the Bank from the Treasurer nor has any notice in writing been given by the Treasurer, in either case pursuant to clause 3.7 of the Farrow Deed.

22. Guarantees

Each Guarantee granted by the Treasurer or any entity representing the Crown in right of the State of Victoria or any member of the Trico Group in favour of any member of the SBV Group is a legal and binding obligation of the Treasurer or the entity representing the Crown or the member of the Trico Group (as the case may be) and is valid and, subject to discretions applying in respect of equitable remedies, enforceable according to its terms.

23. Stateguard

No member of the SBV Group is in any way liable or responsible for, or has any obligations (including, without limitation, pursuant to any Guarantee) in respect of, Stateguard or any of its Financial Indebtedness or activities or operations.

24. Interest

All capitalised or accrued but unpaid interest owing to the Bank or any member of the SBV Group at the Completion Date which is included in the Final Accounts which is not or has not been paid to CBA as the successor of the Bank or the relevant member of the SBV Group will be paid when due.

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PART A

Debt instruments issued by the State Bank

<i>Issue Amount</i>	<i>Description of Amount</i>	<i>Maturity Date</i>
USD 250 million	Guaranteed Undated Variable Rate Capital Notes	—
USD 125 million	Guaranteed Ten Year Extendible Floating Rate Capital Notes	June 1999
AUD 300 million	Extendible Floating Rate Stock	22 December 2004
USD 100 million	9 ¹ / ₄ % Guaranteed Notes	26 July 1993
AUD 75 million	15 ¹ / ₄ % Guaranteed Notes	14 February 1991
AUD 50 million	15 ¹ / ₂ % Guaranteed Notes	13 July 1994
JPY 10 billion	5 ³ / ₈ % Guaranteed Notes	18 October 1991
AUD 350 million	12% SBV Bonds	15 March 1993
GBP 20 million	11·35% Note	14 April 1994
AUD 75 million	12 ¹ / ₂ % SBV Bonds	15 February 1995
JPY 10 billion	7% Guaranteed Bear Notes	21 November 1992
GBP 75 million	11 ¹ / ₂ % Guaranteed Notes	21 August 1994
CAD 75 million	11% Guaranteed Notes	26 May 1992
USD 20 million	Loan Agreement dated 24/11/88	25 November 1993
AUD 100 million	12 ¹ / ₂ % SBV Bonds issued 12/7/90	15 October 1996
AUD 252 560 164	Zero Coupon Inscribed Stock issued 29/12/89	30 April 1992
AUD 22 572 816	Zero Coupon Inscribed Stock issued 29/12/89	30 April 1991

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<i>Issue Amount</i>	<i>Description of Amount</i>	<i>Maturity Date</i>
AUD 200 million	12 month deposit facility issued 5/8/90	2 August 1991
AUD 15 million	12 ¹ / ₂ % Term Deposit issued 8/12/88	1 June 1997
AUD 3.675 million	Zero Coupon Deposit issued 27/12/89	14 March 1995
AUD 3 million	Fixed Deposits issued 1/12/89	AUD 1 million 3 December 1990 AUD 2 million 2 December 1991
USD 250 million	Loan Agreement dated 8/4/86 with S.B. Victoria Funding Inc., Delaware	Various
USD 250 million	Multi-currency Euro Commercial Paper/Euro Certificate of Deposit Program—London	Various
USD 250 million	Multi-currency London Certificates of Deposit	Various
AUD 500 million	Euro Commercial Paper Program—Hong Kong	Various

Swap agreements

1. Interest Rate Exchange Agreement dated 24 November 1988 between State Bank of Victoria and The Long-Term Credit Bank of Japan, Limited.
2. Interest Rate and Currency Exchange Agreement dated 25 July 1988 between the Commissioners of the State Bank of Victoria and The Fuji Bank, Limited, Tokyo.
3. Interest Rate and Currency Exchange Agreement dated 13 April 1989 between State Bank of Victoria and Baring Brothers & Co., Limited.

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PART B

<i>Issue Amount</i>	<i>Description of Amount</i>	<i>Maturity Date</i>
USD 125 million	Guaranteed Undated Capital Notes	—
USD 125 million	8½% Guaranteed Notes	18 June 1993
USD 300 million	Guaranteed Floating Rate Notes	23 July 1996
JPY 5 billion	Loan Agreement dated 24/6/86	27 June 1991
JPY 3.3 billion	Loan Agreement dated 14/7/86	24 July 1991
JPY 3 billion	Loan Agreement dated 30/7/87	31 July 1992
JPY 4 billion	Loan Agreement dated 28/9/87	29 September 1997
JPY 4 billion	Loan Agreement dated 28/9/87	30 September 1997
USD 68 704 913	8% Guaranteed Rainbow Notes	27 July 1992
JPY 15 billion	7% Guaranteed Bear Notes	10 May 1992
JPY 20 billion	Guaranteed Stepped-up Coupon Notes	10 December 1991
JPY 10 billion	5% Guaranteed Notes	12 March 1992
JPY 30 billion	4.75% Guaranteed Notes	7 July 1992

PART C

1. Deed of Agreement dated 29 September 1986 between the Treasurer and State Bank in respect of the Subscription Agreement entered into with Merrill Lynch International & Co. and other banks or financial institutions referred to therein dated 22 September 1986 for the issue of

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US\$125 000 000 principal amount of guaranteed undated capital notes in bearer form with interest coupons attached.

2. Deed of Agreement dated 19 June 1989 between the Treasurer and State Bank in relation to the issue of US\$250 000 000 principal amount of guaranteed undated variable rate capital notes on the conditions described therein.
3. Deed of Agreement dated 19 June 1989 between the Treasurer and State Bank in relation to the issue of US\$125 000 000 principal amount of guaranteed extendible floating rate notes on the conditions described therein.
4. Deed of Agreement dated 29 December 1989 between the Treasurer and State Bank in relation to the proposed issue of A\$50 000 000 principal amount of extendible floating rate stock (tranche B).
5. Deed of Agreement dated 29 December 1989 between the Treasurer and State Bank in relation to the proposed issue of A\$200 000 000 principal amount of extendible floating rate stock (tranche A).
6. Deed of Agreement dated 29 December 1989 between the Treasurer and State Bank in relation to the proposed issue of A\$50 000 000 principal amount of extendible floating rate stock (tranche C).



ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 14 November 1990

Legislative Council: 30 November 1990

The long title for the Bill for this Act was "A Bill to give effect to an Agreement between the State and the Commonwealth Bank for the succession of the Commonwealth Bank to the State Bank, to repeal the **State Bank Act 1988**, to make consequential amendments to certain other Acts and for other purposes."

The **State Bank (Succession of Commonwealth Bank) Act 1990** was assented to on 18 December 1990 and came into operation as follows:

Parts 1 (sections 1–6) and 2 (sections 7, 8) on 18 December 1990:
section 2(1);

Part 4 (sections 28–38) on 31 December 1990 (Completion Date):
section 2(2);

Parts 3 (sections 9–27) and 5 (sections 39, 40) on 1 January 1991:
section 2(3)—Special Gazette (No. 73) 31 December 1990 page 1.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **State Bank (Succession of Commonwealth Bank) Act 1990** by Acts and subordinate instruments.

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 53) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **State Bank (Succession of Commonwealth Bank) Act 1990**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 3(Sch. 1 item 52) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Bank (Succession of Commonwealth Bank) Act 1990**

3. Explanatory Details

No entries at date of publication.