

# **New Zealand Bank Act 1861 Amendment Act 1889**

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## **Contents**

	Page
Title	1
Preamble.	
1 Short Title.	3
2 Interpretation.	3
3 Confirming and validating resolutions of 11th and 19th October, 1888.	4
4 Payments to reinstate shares to original value not to increase shareholder's original liability.	4
5 Powers to deal with assets vested in the Board.	4
6 Provisions of section 5 to be retrospective.	6
7 Power to shareholders to change situation of head office of bank.	6

### **An Act to amend "The New Zealand Bank Act, 1861."**

#### **Preamble.**

WHEREAS a joint-stock banking company called "The Bank of New Zealand" was by "The New Zealand Bank Act, 1861" (incorporated by the name of "The Bank of New Zealand;" And whereas by the deed of settlement of the said bank provision was made for increasing the capital of the said bank from time to time as the shareholders might determine upon, but no provision was made for reducing the capital by writing off or cancelling any lost capital or any capital unrepresented by available assets: And whereas the capital of the said bank has from time to time been increased in accordance with the provisions of the said deed of settlement, and such capital was further increased by resolution duly passed at a special general meeting

of the proprietors of the said bank held on the third day of October, one thousand eight hundred and eighty-eight: And whereas by clause eighty-two of the said deed of settlement it is provided that it should be lawful for a general meeting of the proprietors of the said bank by a majority of votes to make new laws, regulations, and provisions for the company, and to amend, alter, and repeal all or any of the existing laws, regulations, and provisions of the company, provided that no such new, amended, or altered laws, regulations, and provisions should be in force till confirmed at a subsequent general meeting as in the said clause mentioned: And whereas by section three of the said Act it was enacted that the several laws, rules, regulations, clauses, and agreements contained in the said deed of settlement, or to be made under or by virtue or in pursuance thereof, were and should be deemed and considered to be and should be the by-laws for the time being of the said corporation, save and except in so far as any of them were or should or might be altered, varied, or repealed by, or should or might be inconsistent or incompatible with or repugnant to, any of the provisions of the said Act or of any of the laws or statutes in force in the Colony of New Zealand, subject nevertheless to be, and the same might be, amended, altered, or repealed, either wholly or in part, in the manner provided in and by the said deed of settlement; but no rule, provision, or by-laws should on any account or pretence whatsoever be made by the said corporation either under or by virtue of the said deed of settlement or of the said Act in opposition to the general scope or true intent and meaning of the said deed of settlement, or of the said Act, or of any of the laws or statutes in force in the said colony: And whereas by section twenty-one of the said Act it is enacted that in the event of the assets of the said corporation being insufficient to meet its engagements then and in that case the shareholders should be responsible to the extent of twice the amount of their subscribed shares only—that is to say, for the amount subscribed and for a further and additional amount equal thereto: And whereas by clause one hundred and nineteen of the said deed of settlement it is provided that, notwithstanding anything thereinbefore contained, if at any time it should be certified by the auditors that the assets of the company were not sufficient to meet its liabilities, or that an emergency had arisen which made a call or calls expedient, it should be lawful for the Board of Directors to make a call or calls upon the proprietors, in proportion to the number of their respective shares, for a sufficient amount to make up such deficiency or to meet such emergency as the case might require, and such call or calls should be payable at such time or times as the Board of Directors should appoint, and should be recoverable against the several parties thereto, by action of debt or otherwise, in like manner as calls were recoverable for the purpose of raising the amount of the several shares in the subscribed capital of the company, and should afterwards be wholly or partially returned to the proprietors making payment thereof, if the same or part thereof were found to be no longer necessary to be retained: Provided always that no call should be made beyond an additional sum equal to the amount of the subscribed capital of the company: And whereas at a meeting of the proprietors of the said bank, held on Thursday, the eleventh day of October, one thousand eight hundred and eighty-eight, the following five resolutions were duly passed—namely, (1) That three pounds per

share of the present paid-up capital of the bank be and the same is hereby cancelled, such capital having been lost or being unrepresented by available assets, and that henceforth dividends shall be paid on such shares as representing seven pounds each instead of ten pounds each, the original amount thereof; but such reduction shall not interfere with or in any way alter the liability of shareholders to contribute a further sum of ten pounds, as provided by the bank's act and deed of settlement in the event of the assets of the corporation being insufficient to meet its engagements; (2) That the directors be empowered at their option to receive from shareholders willing to pay the same, three pounds per share to reinstate their shares to the original amount of ten pounds per share, and on all shares so reinstated to pay dividends on the original amount of such shares, provided that such payment to reinstate shares shall not render the shareholder liable to pay any further or larger amount than he would have been liable for if the shares had remained at ten pounds each, as originally created; (3) That the several assets and accounts held for realisation, and outside the category of what may be regarded as ordinary and current business, be liquidated by the directors as speedily as may be, having regard to advantageous realisation thereof, and that in the meantime such assets be transferred to, and held and treated *in globo* in, a separate liquidation account, and so as that surplus in realising any one asset may be set against deficiency in realising any other without passing such surpluses or deficiencies respectively through the ordinary profit and loss account; (4) That the words beginning "and if," in clause one hundred and two of the deed of settlement, to the end of the clause be and the same are hereby deleted; (5) That, in disposing of the new shares created and authorised to be issued by the resolution of the special general meeting of proprietors held on the third day of October instant, the Board of Directors may make it one of the conditions that payment for such new shares may be made by such instalments as the Board of Directors may think fit: And whereas the said resolutions were duly confirmed at a general meeting of the proprietors held on Friday, the nineteenth day of October, one thousand eight hundred and eighty-eight, pursuant to the said deed of settlement: And whereas doubts have been raised as to whether the said resolutions, or some of them, are not *ultra vires* of the said corporation or the proprietors thereof, and it is expedient that the said doubts should be set at rest: And whereas, in order to give full effect to the said resolutions, it is necessary that the said Act and the deed of settlement of the said bank should be amended as hereinafter provided:

**Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—**

**1 Short Title.**

The Short Title of this Act is "The New Zealand Bank Act 1861 Amendment Act, 1889."

**2 Interpretation.**

In this Act, if not inconsistent with the context,—

“The said Act” means “The New Zealand Bank Act, 1861:”

“The bank” means the corporation constituted by the said Act:

“The Board” means the Board of Directors of the Bank of New Zealand:

“The said resolution number three” means the resolution numbered three in the preamble of this Act:

“The said assets” or “the said assets and accounts” means respectively the assets and assets and accounts referred to in the said resolution number three:

“The deed of settlement” means the deed of settlement of the Bank of New Zealand, and includes all amendments thereof.

### **3 Confirming and validating resolutions of 11th and 19th October, 1888.**

The said resolutions are hereby declared to be and to have been *intra vires* of the said corporation and of the proprietors thereof, and the said resolutions shall be deemed and taken to have been duly, lawfully, and validly made and to have been made with due power and authority; and the said resolutions shall be deemed and taken as from the making thereof to be binding and to have had and hereafter to have full force and effect as though the said corporation and the said proprietors had been specially authorised by the said Act and the said deed of settlement respectively to pass the said resolutions and to carry into effect the objects of the said resolutions respectively.

### **4 Payments to reinstate shares to original value not to increase shareholder’s original liability.**

Notwithstanding anything contained in the twenty-first section of the said Act, or in the one hundred and nineteenth section of the said deed of settlement, it is hereby declared that, in case the Board of Directors of the said bank shall receive from shareholders willing to pay the same three pounds per share to reinstate their shares to the original amount of ten pounds per share as provided for by the hereinbefore-recited resolution numbered two, such payment to reinstate such shares shall not render the shareholder liable under the twenty-first section of the said Act, or the one hundred and nineteenth clause or any other clause of the said deed of settlement, to pay any further or larger amount than he would have been liable for if the shares had remained at ten pounds each as originally created.

### **5 Powers to deal with assets vested in the Board.**

To enable the Board to carry out the objects intended to be effected by the said resolution number three, and to enable the Board more effectually to deal with and realise the said assets and accounts, there shall, notwithstanding anything contained in the said Act or deed of settlement, and more especially notwithstanding anything contained in the seventeenth section of the said Act, or the ninety-ninth clause of the deed of settlement, be vested in the Board with respect to the said assets and accounts the powers following, that is to say,—

- (1.) To transfer to, hold, and treat the said assets and accounts *in globo* in a separate liquidation account, and so that any surplus arising from the realisation of any one asset may be set against any deficiency in realising any other of the said assets without passing such surpluses or deficiencies respectively through the ordinary profit and loss account.
- (2.) The Board may determine what accounts and assets, being the property of the bank on the nineteenth day of October, one thousand eight hundred and eighty-eight, are to be regarded and treated as coming within the operation of the said resolution number three and subsection one of this section.
- (3.) In making up balance-sheets from time to time for the purpose of declaring and paying dividends the Board may, if it thinks fit, discard the said liquidation account, and may make up such balance-sheets without reference to the state of such liquidation account or the said assets, and may pay dividends from profits on current business without regard to the estimated surplus or deficiency of the said liquidation account or the said assets at the time of making up such balance-sheets or paying such dividends.
- (4.) In any case where any of the said assets consists of mortgages of land, whether freehold or leasehold, it shall be lawful for the Board, in the name and on behalf of the bank,—
  - (a.) To buy and hold such land when the same may be sold in exercise of any power of sale contained or implied in any such mortgage;
  - (b.) To become absolute owner of any such land by valuing the same when proving on the estate of any bankrupt mortgagor in accordance with the bankruptcy laws for the time being in force;
  - (c.) To pay off any prior mortgage or encumbrance;
  - (d.) To purchase the equity of redemption in any such lands from the assignee or trustee in bankruptcy of any bankrupt mortgagor or encumbrancer.
- (5.) In cases of mortgages of leasehold land, or in cases of any other leasehold land being part of the said assets, it shall be lawful for the Board, in the name and on behalf of the bank, to purchase and hold the freehold of such lands if the Board shall think it advisable so to do.
- (6.) To sell, mortgage, charge, or otherwise deal with the said assets of whatever nature in such way in all respects as the Board in its discretion may think fit.
- (7.) In selling or disposing of any of the assets it shall be lawful for the Board, in the name and on behalf of the bank, to accept, as the consideration or part of the consideration for the sale thereof, any fully paid-up shares in any company to which the same may be sold, and to hold such shares until the Board can conveniently dispose of the same.

- (8.) It shall be lawful for the bank to take and hold merchandise, ships, shares in companies, and other real and personal properties, being part of the said assets, in its corporate name; and all conveyances, assignments, or transfers heretofore or hereafter to be made of any such properties, being part of the said assets, to the bank in its corporate name shall be taken and deemed to be and to have been good and valid to vest such properties in the said bank, and the said bank shall be deemed to have good right and authority to take and hold such properties accordingly.

**6 Provisions of section 5 to be retrospective.**

The powers and provisions contained in section five of this Act shall have a retrospective operation, and shall be deemed to have been in force as from the eleventh day of October, one thousand eight hundred and eighty-eight, so as to validate anything which may have been done by the bank or the Board between that date and the coming into operation of this Act.

**7 Power to shareholders to change situation of head office of bank.**

Notwithstanding anything contained in the said Act or in the deed of settlement, it shall at any time after the passing of this Act be lawful for a general meeting of the proprietors of the bank, by resolution from time to time, to change the place at which the head office or principal banking establishment of the bank is located to any place, being part of the British dominions, either within or without the Colony of New Zealand: Provided that any such resolution shall be passed and confirmed as provided for in clause number eighty-two of the deed of settlement: Provided also that it shall be lawful for a general meeting of proprietors of the bank (subject to the provision hereinafter contained) from time to time, by such resolution as aforesaid, to fix or appoint any place or places, being part of the British dominions, either within or without the Colony of New Zealand, as the place or places at which the several things required by the said Act and deed of settlement to be done in the City of Auckland may be done: Provided further that, if the place at which the several things mentioned in the sixth and seventh sections of the said Act, and the one hundred and tenth clause of the deed of settlement, may or are to be done is changed from the City of Auckland, the place to be fixed or appointed for the purposes of the said sixth and seventh sections of the said Act, and the one hundred and tenth clause of the deed of settlement, instead of the City of Auckland, shall be some place within the Colony of New Zealand.