

Bank of New Zealand and Banking Act Amendment Act 1898

Public Act 1898 No 9
Date of assent 15 October 1898

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An Act to make Further Provision respecting the Bank of New Zealand.

Preamble.

WHEREAS during a recent session of Parliament a Committee of the House of Representatives was appointed to make certain inquiries respecting the Bank of New Zealand and matters connected therewith: And whereas on the ninth day of October, one thousand eight hundred and ninety-six, the said Committee presented its report, and it is expedient to give effect to certain of the recommendations contained therein:

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 Bank of New Zealand and Banking Act Amendment Act, 1898.”

2 Board of Directors reconstituted.

On and after the thirty-first day of December, one thousand eight hundred and ninety-eight, the Board of Directors of the Bank of New Zealand (hereinafter called “the Bank”) shall consist of six persons, of whom,—

- (1.) Four shall be appointed by the Governor in Council; and
- (2.) Two shall be elected by the shareholders of the Bank.

3 Present directors eligible.

Subject to the provisions hereinafter contained, the directors in office immediately prior to the said thirty-first day of December shall be eligible for appointment or election under this Act.

4 Provisions as to directors appointed by Governor in Council.

As to each of the four directors to be appointed by the Governor in Council the following provisions shall apply:—

- (1.) He shall hold office as hereinafter provided, and shall be eligible for reappointment.

- (2.) He may at any time resign by notice in writing to the Governor, and the Governor in Council may at any time, on the ground of misconduct or incapacity, remove him from office.
- (3.) He shall not be subject to the provisions of the deed of settlement of the Bank as to qualification, retirement, or removal.
- (4.) Whenever his seat becomes vacant, otherwise than by effluxion of time, it shall be the duty of the Board of Directors (hereinafter called "the Board") to forthwith notify the fact to the Colonial Treasurer; whereupon the Governor in Council shall as soon as practicable fill the vacancy by appointing a successor, who shall take office from the date of his appointment, and shall hold office for the unexpired residue of the term of his predecessor, and subject to the same conditions.

5 Their term of office.

The ordinary term of office of the four members to be appointed by the Governor in Council shall be two years, subject, however, to the following special provisions:—

- (1.) Of the four members first appointed, two shall retire from office on the thirty-first day of March, one thousand nine hundred and one; and the members to so retire shall, on or before the first Monday in February in that year, be decided by lot amongst the four.
- (2.) On the thirty-first day of March, one thousand nine hundred and two, and on the same day in each subsequent year, the two members who have then been longest in office shall retire: Provided that, in computing the length of office in the case of a member appointed under subsection four of the last-preceding section hereof, there shall be included his predecessor's period of office.
- (3.) It shall be the duty of the Board to notify to the Colonial Treasurer not later than the first Wednesday in February, one thousand nine hundred and one, the names of the two members who are to retire in that year pursuant to lot, and if the Board fails or neglects so to do, or if the members to retire have not been duly decided by lot, the Colonial Treasurer shall determine by lot the members who shall retire, and they shall retire accordingly.
- (4.) The successor to each member who retires pursuant to the provisions of this section shall be appointed by the Governor in Council not later than the first Wednesday in March in the year in which the retirement occurs, and shall take office on the thirty-first day of that month.

6 As to directors to be elected by shareholders.

As to each of the two directors to be elected by the shareholders of the Bank the following provisions shall apply:—

- (1.) He shall be elected at a special meeting of the proprietors, to be held by the authority of this Act at the head office of the Bank in Wellington, on the second

Monday in December, one thousand eight hundred and ninety-eight, and shall hold office as hereinafter provided, but shall be eligible for re-election.

- (2.) He, as also each of his successors in office, shall possess the qualifications prescribed by subsection two of section twelve of "The Bank of New Zealand Share Guarantee Act, 1894," as amended by subsection four of section fourteen of this Act, and in all other respects shall be subject to the provisions of the deed of settlement of the Bank.
- (3.) As often as his seat becomes vacant, otherwise than by effluxion of time, the vacancy shall be filled in manner provided by the deed of settlement of the Bank.

7 Their term of office

The ordinary term of office of the two members to be elected by the shareholders of the Bank shall be two years, subject, however, to the following special provisions:—

- (1.) Of the members first elected, one shall retire from office on the thirty-first day of March, one thousand nine hundred and one, and the member to so retire shall, on or before the first Monday in February in that year, be decided by lot amongst the two:

Provided that if for any reason the two do not cast lots the Board shall determine by lot, or, if the Board fails or neglects so to do before the first Wednesday in February in that year, the Colonial Treasurer shall determine by lot, which of the two shall retire, and he shall retire accordingly.

- (2.) On the thirty-first day of March, one thousand nine hundred and two, and on the same day in each subsequent year, the member who has then been longest in office shall retire.
- (3.) The successor to each member who retires pursuant to the provisions of this section shall be elected at the half-yearly general meeting of shareholders to be held in Wellington in the month of February next preceding the date on which the retirement occurs, and shall take office on such date.
- (4.) Subsection three of section six hereof shall be construed subject to the provisions of this section.

8 When directors to take office.

The directors first appointed and elected as aforesaid shall take office on the thirty-first day of December, one thousand eight hundred and ninety-eight, and thereupon,—

- (1.) The directors then previously in office shall cease to hold office.

Office of President abolished.

- (2.) The office of the President of the Bank shall be deemed to be abolished, and the President shall cease to hold that office, and all references to him, his office or functions, contained in "The Bank of New Zealand Share Guarantee

Act, 1894,” “The Bank of New Zealand and Banking Act, 1895,” or any amendment thereof, other than this Act, shall be deemed to be repealed:

Compensation.

Provided nevertheless as follows, that is to say:—

- (a.) Within one month after the abolition of his office the Board shall offer him, without prejudice, the sum of four thousand five hundred pounds in full satisfaction of any right or claim he may have against the colony or the Bank for damages or compensation for loss of office.
- (b.) If he declines to accept such offer he may, within three months after the abolition of his office, but not later, institute proceedings in any Court of competent jurisdiction against the Bank to recover damages for wrongful removal from office: Provided that he shall not be entitled to recover more damages from the Bank than he would have been entitled to recover from Her Majesty if he had been removed by the Governor in Council.
- (c.) For the purposes of such proceedings he shall be deemed to have been appointed to his office by the Bank instead of by the Governor in Council, and to have been removed from office by the Bank instead of by this Act.
- (d.) In such proceedings the Bank shall be entitled to set up any defence that would be available in an action for damages for wrongful dismissal; and in such defence the Bank shall be entitled to allege, prove, and avail itself of any act or default on the part of the President which would have been a defence to an action for wrongful dismissal if the dismissal had been occasioned by such act or default forthwith upon the same coming to the knowledge of the Bank.
- (e.) The amount of damages and costs, if any, awarded to him by final judgment in such proceedings shall be paid by the Bank.
- (f.) Subject to and without derogating from the foregoing provisions, nothing hereinbefore contained shall be construed as an admission or recognition that he has any right or claim to compensation or damages as against the Bank, and in no case shall he have any such right or claim as against Her Majesty.

9 Contract as to salary, &c., of President declared void.

Every written contract or agreement as to salary, tenure of office, or otherwise howsoever, made between the Bank or the Board on the one part, and the President of the Bank on the other part, at any time subsequent to the coming into operation of “The Bank of New Zealand Share Guarantee Act, 1894,” is hereby declared to be void for all purposes; and no party to any such contract or agreement shall have any claim to compensation or otherwise by reason of the voiding thereof.

10 Provisions as to Board.

With respect to the Board as hereinbefore constituted under this Act, and the members thereof, the following provisions shall apply:—

- (1.) No person shall be eligible for appointment as a director appointed by the Governor in Council who is a member of the Legislative Council or the House of Representatives, nor shall any person be eligible for such an appointment within a period of twelve months after such person shall have ceased to be a member of the Legislative Council or the House of Representatives. Any person appointed in contravention of this enactment shall be liable to a penalty of fifty pounds for every day such person shall act as a director.
- (2.) No Civil servant within the meaning of “The Disqualification Act, 1878,” shall be eligible for appointment as a director of the Bank, and no Civil servant shall be so eligible until he has left the Civil Service for at least twelve months.

Chairman.

- (3.) The directors shall at their first meeting elect one of their number to be Chairman of the Board.

Meetings.

- (4.) An ordinary meeting of the Board shall be held at least once a month, and at regular periodical intervals.

Quorum.

- (5.) At all meetings of the Board (whether ordinary or special) the quorum shall be an absolute majority of all the directors who for the time being are in office.
- (6.) If any director fails to attend three consecutive ordinary meetings of the Board his office shall thereby become vacant, unless such non-attendance has been previously consented to by the Board.

11 Chairman.

The Chairman of the Board shall hold his office as Chairman for one year, or until the election of his successor, but shall be eligible for re-election, and the office shall be filled by election at the first meeting of the Board held in the month of January in each year.

12 Remuneration of Chairman and directors.

The remuneration of the directors whilst they hold office shall be at the rate of two thousand pounds per year to be divided amongst them during each year in such shares as are fixed by resolution of the Board, to be passed as early in the year as is practicable.

13 Travelling-expenses.

Irrespective of such remuneration the Chairman and each member attending any meeting of the Board, or when travelling on business connected with the Bank, shall be entitled to receive in respect thereof his actual travelling-

expenses according to a scale to be fixed by regulations to be made by the Board with the approval of the Colonial Treasurer.

14 Voting at meetings of shareholders.

With respect to all meetings of the shareholders of the Bank the following provisions shall apply:—

- (1.) No director, auditor, or solicitor of the Bank shall be qualified to vote as the proxy for any shareholder.
- (2.) No proxy-holder shall, by virtue of his proxies, be qualified to exercise more than two hundred and fifty votes on any resolution.
- (3.) So long as the preferred shares issued under “The Bank of New Zealand and Banking Act, 1895,” are the property *of the* colony, they shall confer no right to convene, vote at, or otherwise take part in any meeting of shareholders.
- (4.) The words “either of A shares or,” and also the words “or partly of one class and partly of the other class,” in subsection two of section twelve of “The Bank of New Zealand Share Guarantee Act, 1894,” are hereby repealed.

Veto by Governor in Council.

- (5.) On the recommendation or with the concurrence of the Board, the Governor in Council may, in his discretion, veto any resolution passed by the shareholders:
Provided that such veto is exercised under twenty-eight days after the day on which such resolution was passed.
- (6.) Every resolution so vetoed shall be deemed to be void as from the date on which it was passed.

15 Assistant Auditor to be appointed.

- (1.) In addition to the Auditor (hereinafter called “the Chief Auditor”) appointed under section thirteen of “The Bank of New Zealand Share Guarantee Act, 1894,” to act in respect of the business of the Bank in the Australasian Colonies and elsewhere outside the United Kingdom, the Governor in Council may appoint a fit person to act as Assistant Auditor in respect of such business.

Salary of Assistant Auditor.

- (2.) The salary or remuneration of the Assistant Auditor, being a sum not exceeding one thousand pounds per annum, shall be fixed and paid, and be subject to alteration, in manner prescribed by the aforesaid section thirteen in the case of the Chief Auditor.
- (3.) The Colonial Treasurer may from time to time make regulations defining the duties, functions, and powers of the Assistant Auditor.

16 Transfer of shares not valid until authorised by Chief Auditor.

From and after the passing of this Act no transfer of shares of the Bank shall be valid until authorised in writing by the Chief Auditor, or by some person

appointed by him with the approval in writing of the Colonial Treasurer; and section four of “The Bank of New Zealand Share Guarantee Act, 1894,” shall be construed accordingly.

17 Chief Auditor may attend Board meetings.

The Chief Auditor shall have the right to attend the meetings of the Board, but shall not take any part in the proceedings.

And suspend proceeding of Board.

- (1.) The Chief Auditor may by memorandum recorded in the Board’s minute-book at such meeting or thereafter suspend the operation of any act or proceeding of the Board until the Board has had an opportunity of further considering the same at a subsequent meeting.
- (2.) The result of such further consideration shall be recorded in the Board’s minute-book.

18 President’s veto revoked.

From and after the passing of this Act the power of veto theretofore possessed by the President shall be deemed to be revoked.

19 Composition may be accepted in respect of liability for calls.

In any case where the Board by a majority of all its members thinks it expedient in the Bank’s interests so to do, it may accept from any shareholder such composition in respect of his liability for calls as it thinks fit:

Proviso.

Provided that in every case the proposed composition is previously approved in writing by the Chief Auditor, and (where the liability exceeds one hundred pounds) is also sanctioned by a Judge of the Supreme Court on application by motion in that behalf:

Provided further that the Board shall not accept any such composition of a liability for calls unless it includes the forfeiture of the shares in respect of which such calls are made.

20 Bank may make provision for losses or deficiencies.

Notwithstanding anything to the contrary contained in “The Bank of New Zealand Share Guarantee Act, 1894,” or “The Bank of New Zealand and Banking Act, 1895,” the Bank may from time to time, as and when it thinks fit, out of its profits, make such provision as it deems desirable for ascertained losses or estimated deficiencies in respect of such of its assets as consist of trading concerns, properties and other assets taken over or acquired from the Bank of New Zealand Estates Company (Limited), buildings acquired from the Colonial Bank of New Zealand, good-will paid to the Colonial Bank of New Zealand, and expenses incurred in connection with the conversion or payment of debentures.

21 How annual dividends on preferred shares to be paid.

Notwithstanding anything to the contrary contained in “The Bank of New Zealand and Banking Act, 1895,” it is hereby declared that the annual dividends on the preferred shares issued to Her Majesty under section seven thereof shall be paid by the Bank to the Agent-General of the colony in London by half-yearly instalments on the twenty-first day of June and the twenty-first day of December in each year, and the consent or authority of the shareholders shall not be necessary.

22 Powers of attorney, &c., in favour of Colonial Bank to be exercisable by Bank of New Zealand.

- (1.) The provisions of paragraph two of section forty-two of the last-mentioned Act shall extend and apply to every power of attorney, letter of attorney, or authority which, having been given by any person to the General Manager of the Colonial Bank of New Zealand, or to any of the managers or officers of the Colonial Bank of New Zealand, authorising the said General Manager or the said managers and officers to do any act or thing for and on behalf of or in the name of the grantor thereof, was in force at the time of the transfer of the business of the Colonial Bank of New Zealand to the Bank of New Zealand.
- (2.) The General Manager of the Bank of New Zealand shall be deemed to have and to have had vested in him from the time of the said transfer of the said business all the powers and authorities granted respectively by any such power of attorney, letter of attorney, or authority to the persons therein named.
- (3.) The words “the General Manager of the Bank of New Zealand” in this section shall extend to and include any person for the time being acting as General Manager of the Bank of New Zealand.

*GENERAL***23 Assets Board balance-sheet to be yearly instead of half-yearly.**

The balance-sheet and statement of accounts of the Assets Realisation Board shall be made up annually to the thirty-first day of March in each year, instead of half-yearly as provided by section fifty-two of “The Bank of New Zealand and Banking Act, 1895”; and the same shall be accompanied by a report on the transactions of the year, together with such other particulars as the Governor in Council from time to time prescribes.

24 Bank balance-sheet to be annual.

Section fifty-three of the last-mentioned Act is hereby repealed, and in lieu thereof it is hereby enacted that the balance-sheet and statement of accounts of the Bank shall be made up annually to the thirty-first day of March in each year, and a copy thereof, certified as correct under the hand of the Auditor, shall, as soon as the same is available, be laid before Parliament if in session,

or, if not, then within ten days after the commencement of the next-ensuing session thereof.

25 Transfer of assets from Estates Company to Bank.

Whereas the Bank is beneficially entitled to all the assets of the Bank of New Zealand Estates Company (Limited), and it is expedient to facilitate the winding-up of that company and the transfer of its assets to the Bank: Be it therefore enacted as follows:—

- (1.) All the assets of the said company are hereby, without the necessity of any instrument of assurance, transferred to and vested in the Bank, subject nevertheless to all encumbrances, liens, and interests affecting the same.
- (2.) A certificate in writing purporting to be under the hands of two directors of the said company and two directors of the Bank, certifying that the particular asset or assets therein described are transferred to and vested in the Bank pursuant to this section, shall be conclusive evidence of the fact. And every such certificate shall be registrable as a deed within the meaning of “The Deeds Registration Act, 1868,” and as an instrument within the meaning of “The Land Transfer Act, 1885,” and shall be exempt from stamp duty.

26 Assets Board may transfer flour-mill and land to Bank.

Whereas amongst the assets which, pursuant to the provisions of “The Bank of New Zealand and Banking Act, 1895,” were sold by the Estates Company to and vested in the Assets Board was included a property described in the Schedule to that Act as “Lots 12 to 16, Section 3, Fort Street, Shortland Street, Emily Place, Auckland, with cottage and fish-house”: And whereas such description is inaccurate, inasmuch as portion of that property consists of a flour-mill and the land appurtenant thereto, which should have remained in the Estates Company, and have been afterwards transferred by it to the Bank: And whereas the value of such portion was not included in the consideration passing from the Assets Board to the Estates Company on the aforesaid sale: Now, therefore, for the purpose of rectifying the error that has been made, the Assets Board is hereby empowered and directed to have the land appurtenant to the said flour-mill surveyed, and the boundaries thereof fixed to the mutual satisfaction of the Assets Realisation Board and the Bank, and, when such boundaries are so fixed as aforesaid, to transfer and assure to the Bank the said last-mentioned land, with the flour-mill and all other buildings erected thereon, without requiring any payment for the same. The memorandum of transfer for effectuating the purpose aforesaid shall be exempt from stamp duty.

27 Deed of settlement and Acts modified.

The deed of settlement of the Bank, “The Bank of New Zealand Share Guarantee Act, 1894,” “The Bank of New Zealand and Banking Act, 1895,” and every other Act or enactment which is in any way in conflict with this Act, are

hereby respectively modified in so far as such conflict exists, but not further or otherwise.