

## TASMANIA BANK ACT 1987

### No. 54 of 1987

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## TASMANIA BANK ACT 1987

No. 54 of 1987

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**AN ACT to provide for the amalgamation of The Launceston Bank for Savings and The Tasmanian Permanent Building Society and the formation, by the amalgamation, of a Tasmania Bank to carry out the operations of banking and other functions, to provide for related and other purposes, and to amend the *Trustee Banks Act 1985*.**

[Royal Assent 17th August 1987]

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

### PART I

#### PRELIMINARY

**1**—This Act may be cited as the *Tasmania Bank Act 1987*. Short title.

**2**—(1) This section and sections 1 and 41 shall commence Commencement. on the day on which this Act receives the Royal assent.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

Interpretation.

- 3—(1) In this Act, unless the contrary intention appears—
- “accounting records” means all financial records necessary for the preparation of proper accounts, and includes working papers and other documents necessary to explain the methods and calculations by which accounts are made up;
- “accounts” means, according to the context—
- (a) customers’ accounts; or
  - (b) statements of income and expenditure and balance sheets, included notes (other than reports of the Board or the auditors of the Bank) attached to, or intended to be read with, any such account;
- “amalgamating bodies” means the trustee bank and the building society;
- “Auditor-General” has the meaning assigned to that expression by section 3 of the *Audit Act 1918*;
- “Bank” means the Tasmania Bank established under section 5;
- “Board” means the Board of the Bank;
- “the building society” means The Tasmanian Permanent Building Society incorporated under the *Building Societies Act 1876*;
- “the by-laws” means by-laws made and in force under this Act;
- “chairman” means the person for the time being holding office under section 8 as chairman of the Board;
- “Commissioner” means the Commissioner for Corporate Affairs;
- “credit union” has the meaning assigned to that expression by section 71A (1) of the *Stamp Duties Act 1931*;
- “customer”, in relation to a customer of—
- (a) the Bank or the trustee bank, means a person who has an account with the Bank or the trustee bank or who avails himself of any service provided by the Bank or the trustee bank; or
  - (b) the building society, means a person who has a share in the capital of the building society or who avails himself of any service provided by the building society;
- “deputy chairman” means the person for the time being holding office under section 8 as deputy chairman of the Board;

- “Director” means a person for the time being holding office under section 8 as a Director of the Bank;
- “financial year” means the period of 12 months ended on 31st August;
- “functions” includes duties;
- “instrument” means an instrument (other than this Act) that creates, evidences, modifies, or extinguishes rights or liabilities or would do so if it or a copy of such an instrument were lodged, filed, or registered under any Act or law, and includes any judgment, order, or process of a court;
- “liabilities” means all liabilities, duties, and obligations, whether actual, contingent, or prospective;
- “Managing Director” means the person for the time being holding, or acting in, the office of Managing Director of the Bank;
- “officer” means an officer or employee of the Bank;
- “powers” includes authorities;
- “property” means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and, without limiting the generality of the foregoing, includes things in action, goodwill, rights, interests, and claims of every kind in or to property whether arising from, accruing under, created or evidenced by or the subject of an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective;
- “the regulations” means regulations made and in force under this Act;
- “rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective;
- “securities” includes shares, stock, debentures, bonds, and unsecured notes in any right or interest, whether enforceable or not and whether actual, prospective, or contingent in respect of any property;
- “subsidiary corporation” means a body corporate—
- (a) that is a corporation within the meaning of the *Companies (Tasmania) Code* and that would, if the Bank were such a corporation, be deemed, for the purposes of that Code, to be a subsidiary of the Bank; or

(b) that would, if it and the Bank were corporations within the meaning of the *Companies (Tasmania) Code*, be deemed, for the purposes of that Code, to be a subsidiary of the Bank,

whether or not the objects of the body corporate are, or are incidental to, the business of banking;

“the trustee bank” means The Launceston Bank for Savings incorporated under the *Savings Banks Act 1917* and trading as The Launceston Bank for Savings Statewide Bank.

(2) In this Act, a reference to a building society is a reference to a permanent building society established under the *Building Societies Act 1876*.

Act to bind  
Crown.

4—This Act binds the Crown not only in the right of this State but also, so far as the legislative power of Parliament permits, binds the Crown in all of its other capacities.

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## PART II

### ESTABLISHMENT AND ADMINISTRATION OF THE BANK

#### *Division 1—Establishment of the Bank*

Establishment of  
the Bank.

5—(1) There is established by this Act a bank to be known as the Tasmania Bank constituted by the amalgamation of the amalgamating bodies on the understanding that—

(a) the Bank shall be directed and managed along the lines of a free enterprise bank;

(b) the Directors shall be appointed from persons experienced in one or more of the fields of banking, finance, business, and commerce; and

(c) the Bank’s operations shall be conducted in the best interests of the State of Tasmania free from Government control, except as expressly provided in this Act or any other Act.

(2) The Bank—

(a) shall be a body corporate with perpetual succession and a common seal;

- (b) shall be capable of suing and being sued in its corporate name;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) may do and be subject to all other things that bodies corporate may, by law, do and be subject to and that are necessary for or incidental to the purposes for which it is constituted; and
- (e) has the functions imposed, and the powers conferred, on it by or under this Act or any other Act.

(3) All courts, judges, and persons acting judicially shall take judicial notice of the common seal of the Bank affixed to a document and shall, unless the contrary is established, presume that it was duly affixed.

**6—(1) Subject to this section—**

- (a) the Bank is liable to all taxes, rates, duties, and other imposts; and
- (b) instruments to which the Bank is a party are subject to all taxes, duties, and other imposts,

under the law of the State.

**(2) The Treasurer may, by notice published in the *Gazette*—**

- (a) exempt the Bank from a tax, rate, duty, or other impost; or
- (b) exempt an instrument to which the Bank is a party from a tax, duty, or other impost.

(3) If the Treasurer considers that circumstances exist that make it necessary or desirable for him to do so, the Treasurer may, by notice published in the *Gazette*—

- (a) specify a period or periods during which the Bank is not liable to any taxes, rates, duties, and other imposts or is not liable to such of those imposts as is specified in the notice; or
- (b) specify a period or periods during which instruments to which the Bank is a party are not subject to any taxes, duties, and other imposts or are not liable to such of those imposts as are specified in the notice.

**7—The provisions of the *Companies (Tasmania) Code* other than Parts VIII, X, XI, and XII, do not apply to the Bank.**

Liability of  
Bank, &c., to  
State taxes, &c.

Non-application  
of *Companies  
(Tasmania) Code*  
to the Bank.

*Division 2—The Board of Directors, &c.*

Membership of  
the Board.

**8—(1)** There shall be a Board of Directors of the Bank.

(2) The following provisions apply in respect of the number of persons who are required to be appointed as Directors of the Bank:—

- (a) the number of persons required to be appointed as the first Directors shall not be less than 7 or more than 10;
- (b) the number of persons required to be appointed as Directors to succeed the persons referred to in paragraph (a) on the expiration of their respective terms of office shall not be more than 8;
- (c) the number of persons required to be appointed as Directors at any time after the expiration of the respective terms of offices of the persons firstly referred to in paragraph (b) shall not be less than 7 or more than 8.

(3) Subject to subsection (4), the Directors shall be appointed by the Governor.

(4) A person shall not be appointed as a Director under subsection (3) unless he is experienced in one or more of the fields of banking, finance, business, and commerce.

(5) The chairman and the deputy chairman of the Board shall be Directors and shall be appointed by the Governor.

(6) Schedule 1 has effect with respect to the membership of the Board.

(7) Schedule 2 has effect with respect to the meetings of the Board.

Disclosure of  
interests by  
Directors.

**9—(1)** Subject to subsection (2), a Director who has a direct or indirect interest in a contract made or proposed to be made by the Bank or in any other matter in which the Bank is concerned—

- (a) shall, as soon as practicable after the relevant facts have come to his knowledge, disclose the nature of his interest to the Board; and
- (b) shall not take part in any deliberations or decisions of the Board with respect to that contract, proposed contract, or other matter.



(2) A Director shall not be taken to be interested in a contract or proposed contract or any other matter by reason only that—

- (a) in the case of a contract or proposed contract, the contract is made or proposed to be made between;  
or
- (b) in the case of any other matter, there is or will be a connection between,

the Bank and—

- (c) a body corporate established for a public purpose by, or in accordance with, the provisions of an Act in which the Director is a member of the board of management;
- (d) a client of a partnership in which the Director is a member, where the Director does not act personally for the client in respect of the contract or other matter;
- (e) a body corporate in which there are more than 20 members and of which the Director is not an officer or a director; or
- (f) the Director, by reason only that the Director is a customer in common with other customers of the Bank.

(3) A Director who fails to comply with subsection (1) is guilty of a crime and, subject to subsection (4), is liable to be punished on indictment under the *Criminal Code*.

(4) Notwithstanding section 389 of the *Criminal Code*, a person convicted of a crime under subsection (3) is liable to a penalty not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(5) A disclosure made under this section shall be recorded in the minutes of the Board.

(6) Where, under this section, a Director discloses his interest in a contract, proposed contract, or other matter, or his interest in a contract, proposed contract, or other matter is not such as need be disclosed under this section—

- (a) the contract, proposed contract, or other matter is not liable to be avoided on any ground arising from the fiduciary relationship between the Director and the Bank; and

- (b) the Director is not liable to account for profits derived from the contract, proposed contract, or other matter.

Restrictions on loans, &c., to Directors and their spouses.

**10—(1)** The Bank shall not, directly or indirectly, make a loan or otherwise provide financial accommodation to a Director or the spouse of a Director unless the loan is made or the financial accommodation is provided on no better terms than those made available by the Bank to its customers.

(2) In subsection (1), “spouse of a Director” includes a person who, being of the opposite sex to the Director, has cohabited on a permanent basis with him or her and whose cohabitation with him or her has been for a period of at least 3 years immediately preceding the date on which the Board makes the relevant loan or provides the relevant financial accommodation.

(3) This section does not apply to the Managing Director.

Protection of members of Parliament.

**11—**A contract or an agreement in relation to the provision of a loan or other financial assistance by the Bank to which a member of either House of Parliament is a party is not a contract or an agreement with the Government of the State within the meaning of section 33 of the *Constitution Act 1934*.

### *Division 3—Powers and functions of the Board*

Powers of the Board.

**12—(1)** The Board is the governing body of the Bank and has full power to transact any business of the Bank.

(2) Anything done by the Board in the administration of the Bank’s affairs is binding on the Bank.

(3) Subject to this Act, the Board has power to determine the policy of the Bank in relation to any matter and to control the affairs of the Bank.

Functions of the Board.

**13—(1)** In its administration of the Bank’s affairs, the Board shall—

- (a) carry on the general business of banking in an efficient and competitive manner;
- (b) meet competition and provide services in all areas of banking which are from time to time required; and
- (c) manage the Bank in accordance with accepted principles of financial management and with a view to making a profit.

(2) It is the duty of the Board, within the limits of its powers, to ensure that the policy of the Bank is directed to the greatest advantage of the people of Tasmania and has due regard to the stability and financial development of the economy of Tasmania.

*Division 4—The Managing Director and staff of the Bank*

**14—(1)** There shall be a Managing Director of the Bank. The Managing Director.

(2) Subject to this section, the Managing Director shall be one of the Directors and shall be appointed by the Governor, following consultation by the Minister with the Board, for such term as is specified in his instrument of appointment.

(3) The length of the term of office of the Managing Director shall be determined by the Board.

(4) A person who has attained the age of 65 years is not eligible to be appointed or re-appointed as the Managing Director and a person holding the office of Managing Director ceases to hold that office on attaining that age.

(5) The terms and conditions of employment of the Managing Director—

(a) with respect to matters other than the remuneration and allowances payable to him, shall be determined by the Governor on the recommendation of the Board; and

(b) with respect to the remuneration and allowances payable to him, shall be determined by the Board.

(6) The Managing Director is, subject to the control of the Board, responsible for the management of the Bank.

**15—(1)** The Managing Director may appoint such officers of the Bank as he thinks necessary for the effective operation of the Bank. Appointment of officers.

(2) The terms and conditions of employment of an officer, including the remuneration and allowances payable to him, shall, subject to any industrial award made under an Act of Tasmania or the Commonwealth relating to persons engaged in the work for which the officer is appointed, be determined by the Managing Director with the approval of the Board.

(3) In subsection (2), “industrial award” includes an industrial agreement having the force of an industrial award made under an Act of Tasmania or the Commonwealth.

(4) The provisions of the *Tasmanian State Service Act 1984* do not apply to or in respect of the appointment of an officer by the Managing Director and such an officer is not, in his capacity as an officer, subject to the provisions of that Act during his term of office as an officer.

(5) The Bank may provide retirement and other benefits and services for officers and former officers, their spouses, and dependants.

#### *Division 5—Delegations*

Delegations by Board.

**16—(1)** The Board may, in cases or classes of cases specified by the Board, by instrument in writing, delegate to a person specified in the instrument of delegation the performance of such of its functions and the exercise of such of its powers under this Act (other than this power of delegation) as are specified in that instrument.

(2) The Board may, by instrument in writing, revoke wholly or in part or vary a delegation made by it under this section.

(3) A function or power, the performance or exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.

(4) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstances, as are specified in the instrument of delegation.

(5) Notwithstanding a delegation under this section by the Board, the Board may continue to perform or exercise all or any of the functions or powers delegated by it.

(6) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section by the Board shall have the same force and effect as if the act or thing had been done by or to the Board and shall be deemed to have been done by or to the Board.

(7) An instrument purporting to be signed by a delegate of the Board in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Board and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Board under this section.

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## PART III

## THE OPERATIONS OF THE BANK

17—(1) The Bank shall carry on the general business of banking and provide such services as are provided by banks. General business of banking.

(2) The general business of banking may be carried on by the Bank within or outside Tasmania.

(3) The Bank is vested with such powers as are necessary for the purpose of carrying on the general business of banking and the services referred to in subsection (1).

(4) Without limiting the generality of subsection (3), the Bank has power, in addition to any other powers conferred on it by this Act or any other Act—

- (a) to borrow money, lend money, receive money on current account, on fixed deposit, or in any manner determined by the Bank from time to time;
- (b) to buy, sell, discount, re-discount, and otherwise deal with, if circumstances permit, instruments, including bills of exchange, promissory notes, and treasury bills;
- (c) to issue bills and drafts and effect transfers of money;
- (d) to issue transferable certificates of deposits;
- (e) to buy and sell, and, subject to paragraph (g), otherwise deal with securities issued by the Commonwealth and other securities, including debentures and inscribed stock;
- (f) to establish credits and give guarantees and indemnities;
- (g) with the prior approval of the Treasurer, to issue securities (whether or not at a discount or premium), including debentures, inscribed stock, promissory notes, unsecured notes, special capital notes, and subordinated debt;
- (h) to buy, sell, and otherwise deal in foreign currency, specie, and gold and other precious metals;
- (i) to accept deposits of foreign currency;
- (j) to appoint agents and attorneys and define their respective powers;
- (k) to underwrite loans and other financial accommodation and issues of shares, debentures, inscribed stock, and other securities and interests;
- (l) to act as an agent, broker, or attorney;

- (m) to act as a trustee;
- (n) to acquire, manage, and hold property and to sell, mortgage, charge or otherwise encumber, lease, or otherwise deal with property;
- (o) to erect, alter, and maintain buildings and structures and all improvements of those buildings and structures and to dispose of those buildings and structures on such terms and conditions as the Bank may from time to time determine;
- (p) to hire out chattels in pursuance of hiring agreements, chattel leasing agreements, or hire-purchase agreements and to conduct any other business involving the hiring of property or the leasing of houses and other property;
- (q) to provide insurance in respect of land mortgaged, or to be mortgaged, as security for a loan made by the Bank and to continue to provide such insurance, notwithstanding repayment of the loan and discharge of the mortgage;
- (r) to provide insurance in respect of property owned by the Bank or in respect of which the Bank has an interest pursuant to a contract;
- (s) to acquire shares in any body corporate, society, union, or venture—
  - (i) which is in the nature of a finance company; and
  - (ii) which provides, among other things, for leasing, hire-purchase, and the giving of credit;
- (t) with the prior approval of the Treasurer, to promote bodies corporate involved in financial matters and the provision of finance;
- (u) with the prior approval of the Treasurer, to—
  - (i) promote or establish, or participate in the promotion or establishment of, subsidiary corporations whose objects are consistent with the powers of the Bank specified in this subsection; and
  - (ii) acquire interests in bodies corporate so that, as a result of such an acquisition, the bodies corporate become subsidiary corporations;

- (v) to enter into arrangements with other banks and financial institutions (including, without prejudice to the generality of the foregoing, building societies and credit unions);
- (w) to reject deposits;
- (x) to provide safe deposit vaults and boxes and hire out safe deposit boxes;
- (y) to operate a registry of shares, debentures, inscribed stock, and other securities and interests;
- (z) to establish and manage funds;
- (za) to provide financial advice, investment management services, and other related services;
- (zb) to provide financial processing and other administrative services;
- (zc) to charge fees and costs, including disbursements, for work carried out by or on behalf of the Bank;
- (zd) to do such other things as the Governor, by order made on the recommendation of the Board, determines; and
- (ze) to do anything incidental to the exercise of any of the foregoing powers.

(5) Without limiting the generality of the expression "deal with" in paragraph (b) of subsection (4), the endorsement and acceptance of bills of exchange is a dealing with bills of exchange for the purposes of that paragraph.

(6) The Bank may establish branches and agencies within and outside Tasmania.

(7) The Bank may provide, or arrange for the provision of, life insurance on the life of any person who is indebted to the Bank.

(8) Any of the powers and functions of the Bank may be exercised and performed—

(a) by the Bank itself;

(b) by a subsidiary corporation; or

(c) by—

(i) the Bank; or

(ii) a subsidiary corporation, or a subsidiary corporation and the Bank, with, in either case, the prior approval of the Treasurer,

in a partnership, joint venture, or other association with other bodies or other persons.

Prime assets  
ratio.

**18—(1)** In this section, “Australian assets” means assets in Australian currency within Australia, other than such amounts as may be approved by the Treasurer.

(2) The Bank shall hold not less than the prescribed percentage (or such other percentage as may be approved by the Treasurer) of its total Australian assets in the form of any one or more of the following:—

- (a) notes and coins;
- (b) balances with the Reserve Bank;
- (c) Treasury notes or any other securities issued by the Government of the Commonwealth or any State of the Commonwealth or the Northern Territory;
- (d) securities issued by a public authority constituted by or under an Act of the Parliament of the Commonwealth, a State of the Commonwealth, or the Northern Territory, being securities guaranteed by the Government of the Commonwealth, a State of the Commonwealth, or the Northern Territory;
- (e) loans to money market dealers authorized by the Reserve Bank, being loans secured against securities referred to in paragraph (c) or (d);
- (f) such other investments as may be approved by the Treasurer.

(3) In subsection (2), “prescribed percentage”, in relation to the total Australian assets of the Bank referred to in that subsection, means such percentage as from time to time applies under the *Banking Act 1959* of the Commonwealth to the prime assets ratio in relation to trading banks.

Special capital  
notes.

**19—(1)** In this section—

“security” means an instrument issued by the Bank pursuant to section 17 (4) (g), whether secured or not and whether for a fixed or an indefinite term;

“special arrangement” means an agreement or arrangement under subsection (2);

“special capital note” means a security issued by the Bank that is the subject of a special arrangement.

(2) The Treasurer may, on behalf of the Government of Tasmania and with the consent of the Bank, enter into an agreement or arrangement, to which the Bank is a party or at the Bank’s request, in connection with the issue of securities by the Bank.



(3) A special arrangement, and the special capital notes to which it relates, may—

- (a) require the Treasurer, on behalf of the Government of Tasmania, to pay to the Bank an amount calculated by reference to the interest and other amounts paid by the Bank to the holders of the notes;
- (b) require the Treasurer, on behalf of the Government of Tasmania, to purchase all or any of the notes and release the Bank from its obligations and liabilities under the notes so purchased;
- (c) provide that the Treasurer may, on behalf of the Government of Tasmania, pay all or any of the interest or other amounts due to the holders of the notes and assume any obligations or liabilities of the Bank under the notes;
- (d) provide that the obligations and liabilities of the Bank under the notes may be enforced only against the Government of Tasmania in the case of any default by the Bank;
- (e) provide for the redemption of all or any of the notes by the Bank; and
- (f) make any other provision that the Treasurer considers appropriate.

(4) Any liability of the Government of Tasmania arising under a special arrangement or special capital note is a charge on the Consolidated Fund and is payable out of that Fund without further appropriation than this subsection.

(5) Unless the Board otherwise determines, the principal amount of each special capital note shall, for accounting purposes, be treated as a subscription of capital.

(6) Nothing in this section prevents the Government of Tasmania or an authority of the State from purchasing or otherwise acquiring special capital notes without releasing the Bank from its obligations and liabilities under the notes.

(7) A certificate signed by the Treasurer and stating—

- (a) that any specified security or specified class of securities issued by the Bank is the subject of a special arrangement;
- (b) that any such security has been issued in accordance with the special arrangement; or

(c) that a special arrangement does or does not make provision of a specified kind,

shall be conclusive evidence, in favour of any person other than the Government of Tasmania or the Bank, of the matters stated in the certificate.

Government  
guarantee.

**20—(1)** The following liabilities are guaranteed by the Government of Tasmania:—

(a) liabilities incurred or assumed by the Bank in the carrying on by the Bank of the general business of banking;

(b) liabilities incurred or assumed by the Bank in the provision of services referred to in section 17 (1);

(c) subject to subsection (2), liabilities incurred or assumed by the Bank in any other business lawfully carried on by the Bank pursuant to this Act or any other Act.

(2) Where a liability referred to in subsection (1) (c) arises as the result of the exercise and performance of the powers and functions of the Bank by a subsidiary corporation, or a subsidiary corporation and the Bank, as mentioned in subparagraph (ii) of section 17 (8) (c), that liability is guaranteed by the Government of Tasmania only if the Treasurer has given his prior approval under that subparagraph to the exercise and performance of those powers and functions.

(3) Any liability of the Crown arising by virtue of subsection (1) is a charge on the Consolidated Fund and is payable out of that Fund without further appropriation than this subsection.

(4) The Treasurer may, after consultation with the Bank, fix charges to be paid by the Bank in respect of a guarantee provided under subsection (1) in so far as it relates to specified liabilities of the Bank.

(5) In this section, “liabilities” includes contingent liabilities and liabilities arising under a guarantee given by the Bank.

21—(1) Where it appears from the audited accounts of the Bank that an operating surplus has been achieved by the Bank in respect of a financial year, the Bank shall, within 3 months after forwarding to the Treasurer a copy of the Bank's audited accounts for that financial year, pay to the Treasurer, for the credit of the Consolidated Fund—

Payment to be made to Consolidated Fund.

- (a) a sum equal to the income tax for which the Bank would have been liable under the law of the Commonwealth assuming that it were a public company liable to income tax under that law; and
- (b) such further sum (if any) as the Treasurer, having regard to the profitability of the Bank, and the adequacy of its capital and reserves, determines to be an appropriate return on the capital of the Bank.

(2) In subsection (1) (a), "income tax" does not include any capital gains tax payable under the *Income Tax Assessment Act 1936* of the Commonwealth.

(3) The Board shall, as soon as practicable after its audited accounts in respect of a financial year have been forwarded to the Treasurer, submit a recommendation to the Treasurer as to the amount of the payment (if any) to be made under subsection (1) (b) in respect of the financial year to which the accounts relate.

(4) The Treasurer shall, in making a determination under subsection (1) (b)—

- (a) apply the same accounting standards as are required to be applied in the preparation of the accounts of the Bank pursuant to section 22; and
- (b) have due regard to, and consult the Board with respect to, the recommendation made by the Board under subsection (3) as to the amount of the payment to which the determination relates.

(5) Any divergence between a recommendation of the Board and a determination of the Treasurer shall be reported in the annual report of the Bank.

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## PART IV

## ACCOUNTS AND AUDIT

Accounts and  
accounting  
records.

**22—(1)** The Board shall cause accounting records to be kept in such a manner as to—

- (a) record correctly and explain the transactions and financial position of the Bank;
- (b) enable true and fair accounts of the Bank to be prepared from time to time; and
- (c) enable the accounts of the Bank to be conveniently and properly audited.

(2) Within 3 months after the end of a financial year, the Board shall cause the following accounts to be prepared:—

- (a) an account giving a true and fair view of the income and expenditure of the Bank for the financial year, and of any surplus or deficit relating to the financial year;
- (b) a balance sheet giving a true and fair view of the state of affairs of the Bank as at the end of the financial year.

(3) The Board shall, as soon as practicable after the accounts prepared under subsection (2) have been audited, forward to the Treasurer a report on the operations of the Bank during the financial year to which the accounts relate, together with a copy of the audited accounts.

(4) A copy of any audited accounts forwarded to the Treasurer in accordance with subsection (3) shall contain a certificate signed by 2 Directors that those accounts are true and correct.

(5) A Director who signs a certificate for the purposes of subsection (4) knowing the accounts to which the certificate relates to be false or misleading in a material particular is guilty of an offence and is liable on summary conviction to a penalty not exceeding 20 penalty units.

(6) The Treasurer shall lay, or cause to be laid, before each House of Parliament copies of a report and audited accounts forwarded to him in accordance with subsection (3) within 14 sitting days of the House after the date on which he receives the report and the copy of the accounts.

**23—(1)** Notwithstanding section 32 of the *Audit Act 1918*, <sup>Audit.</sup> the accounts and accounting records of the Bank shall not be audited by the Auditor-General but shall be audited by a firm of auditors appointed as provided by this section.

(2) As soon as practicable after the day fixed by proclamation under section 2 (2), the Board shall appoint a firm of auditors to act as the auditors of the Bank for such period, being not less than a financial year, as the Board determines.

(3) Upon the expiry or termination of the appointment of a firm of auditors under subsection (2), the Board shall, as required from time to time, appoint a firm of auditors to act as the auditors of the Bank for such period, being not less than a financial year, as the Board determines.

(4) A firm of auditors appointed under subsection (2) or (3) shall be a firm of registered company auditors, within the meaning of the *Companies (Tasmania) Code*.

(5) The Board shall not terminate the appointment of a firm of auditors under this section without the prior approval of the Governor.

(6) A firm of auditors may, when acting as the auditors of the Bank in relation to a financial year, inspect all or any of the mortgages and other securities held by the Bank and, if that firm makes such an inspection, it shall furnish the Bank with a report on the results of the inspection.

(7) A firm of auditors shall report on the Bank's accounting records in respect of the relevant financial year and on the accounts to be laid before Parliament in respect of that financial year.

(8) A firm of auditors shall, in a report under this section in relation to a financial year, state—

(a) whether the accounts in respect of that financial year are in the opinion of the members of the firm properly drawn up in accordance with this Act and so as to give a true and fair view of the matters to which they relate; and

(b) whether the accounting records of the Bank have been, in the opinion of the members of the firm, properly kept in accordance with the provisions of this Act.

(9) In the course of formulating a report under this section, a firm of auditors shall form an opinion as to—

(a) whether there is any defect or irregularity in the accounts or any omission to deal adequately with a matter without regard to which a true and fair view of the matters to which the accounts relate would not be obtained;

(b) whether returns received from branch offices of the Bank are adequate; and

(c) whether the firm has obtained all the information and explanations that it required,

and any deficiency, failure, or shortcoming in respect of any of the above matters shall be mentioned in the report.

(10) A person who is a member of a firm of auditors appointed under subsection (2) or (3) (in this section referred to as “an auditor”) has a right of access at all reasonable times to the accounting records and other records of the Bank and the mortgages and other securities held by the Bank and is entitled to require from the Managing Director, any other Director, or any officer such information and explanations as he thinks necessary for the purposes of the audit and any inspection of those securities.

(11) Where the Managing Director, any other Director, or an officer—

(a) obstructs, hinders, delays, threatens, or assaults an auditor when he is exercising or attempting to exercise his right of access as provided in subsection (10);

(b) fails to comply with a requirement of an auditor when it is within his power to comply with the requirement;

- (c) gives an answer to a question asked by an auditor pursuant to such a requirement which, to his knowledge, is false or misleading in a material particular; or
- (d) intentionally conceals a person from an auditor or prevents a person from appearing before or being questioned by an auditor pursuant to such a requirement or attempts so to conceal or prevent a person,

the Managing Director or other Director or the officer is guilty of an offence and is liable on summary conviction to a penalty not exceeding 5 penalty units.

(12) An auditor incurs, or the members of a firm of auditors appointed under subsection (2) or (3) incur, no liability in defamation for any statement made by him or them in the course of his or their functions as auditor or auditors.

**24—(1)** The Governor may appoint—

Investigations.

- (a) the Auditor-General; or
- (b) some other suitable person,

to make an investigation and report under this section.

(2) A person appointed under subsection (1) shall investigate such matters relating to the operations and financial position of the Bank as are determined by the Governor and shall report to the Governor on the results of his investigations.

(3) For the purposes of an investigation under this section, the investigator shall have, in relation to the accounts, accounting records, and officers of the Bank the same powers as are vested in the Auditor-General by the *Audit Act 1918* in relation to public bodies within the meaning of that Act and officers of those bodies.

(4) Where an investigation is made under this section, the Bank shall—

- (a) in the case of an investigation made by the Auditor-General, pay to the Treasurer; or
- (b) in the case of an investigation made by any other person, pay to that other person,

out of its revenues the cost of the investigation.

(5) The Treasurer shall, on receiving from the Bank the amount of the costs of an investigation under this section, cause that amount to be paid into the Consolidated Fund.

(6) Where the Bank fails to pay the costs of an investigation under this section—

- (a) the Treasurer, in the case of an investigation by the Auditor-General, may recover the amount of those costs by action in a court of competent jurisdiction as a debt due to the Crown; or
- (b) the person by whom the investigation was made, in any other case, may recover the amount of those costs by such an action.

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## PART V

### MISCELLANEOUS PROVISIONS RELATING TO THE BANK

Powers in relation to money and securities of customers who have died or become of unsound mind.

**25—(1)** Where a customer of the Bank dies, the Bank may, in its discretion, and without production of probate of the will, or letters of administration of the estate, of the deceased, apply money standing to the credit of an account in the name of the deceased customer in one or both of the following ways:—

- (a) in payment of the funeral expenses and just debts of the deceased;
- (b) in payment to any person who is, or persons who are, in the opinion of the Bank, entitled to that money,

but the total amount applied under this subsection from an account or accounts in the name of any one deceased person shall not exceed the maximum amount prescribed by the regulations.

(2) Where—

- (a) the Bank holds securities on behalf of a customer for safe custody;
- (b) the total value of the securities does not exceed the maximum amount prescribed by the regulations; and
- (c) the customer dies;

the Bank may, in its discretion, and without production of probate of the will, or letters of administration of the estate, of the deceased, deliver the securities to any person who is, or any persons who are, in the opinion of the Bank, entitled to those securities.



(3) Where a customer of the Bank becomes of unsound mind and it appears to the Bank that money standing to his credit in an account at the Bank is reasonably required for the maintenance of the customer, or the maintenance, education, or advancement of a member of his family, the Bank may apply the money for those purposes, but the total amount applied under this subsection from an account or accounts of any one person shall not exceed the maximum amount prescribed by the regulations.

(4) No action or legal proceeding may be instituted against the Bank, and no claim or demand may be made to the Bank, in respect of any act, or failure to act, under this section.

**26—**(1) Where a customer of the Bank has not operated an account for a period of 6 years or more, the Bank may close the account and transfer the balance to an account entitled the “Customers Unclaimed Money Account”. The Customers Unclaimed Money Account.

(2) Money transferred to the Customers Unclaimed Money Account under subsection (1) shall be paid out on application by a person who satisfies the Bank that he is entitled to that money.

(3) Interest does not accrue on money standing to the credit of the Customers Unclaimed Money Account, except (if at all) to an extent determined by the Bank.

**27—**A receipt given by a minor for the payment of money standing to the credit of an account of the minor is a complete discharge to the Bank for the payment of that money. Power of minor to give effective receipt and discharge for the payment of money.

**28—**(1) Subject to subsection (2), any matter or thing done or omitted to be done by a Director, the Managing Director, or an officer in good faith for the purpose or purported purpose of the performance by him of his functions, or the exercise by him of his powers, under this Act shall not subject him personally to any action, liability, claim, or demand. Protection for Directors, Managing Director, and officers, &c.

(2) Subsection (1) does not preclude the Bank from being subject to any action, liability, claim, or demand to which a Director, the Managing Director, or an officer would, but for that subsection, have been subject.

**29—**(1) A person who—

(a) is or has been a Director, the Managing Director, an officer, or a delegate of the Board pursuant to an instrument under section 16; or

Confidentiality.

(b) holds or has held an appointment by the Bank, shall not disclose any information as to the affairs of the Bank or a customer of the Bank acquired by him in the course of his office as a Director, the Managing Director, or an officer, while acting as such a delegate, or as a result of such appointment, unless—

(c) the disclosure is made in the normal course of business with the Bank;

(d) he has the Bank's or the customer's approval to do so; or

(e) he is authorized or required by any Act or other law to do so.

(2) A person who contravenes subsection (1) is guilty of a crime and, subject to subsection (3), is liable to be punished on indictment under the *Criminal Code*.

(3) Notwithstanding section 389 of the *Criminal Code*, a person convicted of a crime under subsection (2) is liable to a penalty not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

Financial  
provision on  
winding up of  
Bank.

**30**—If the Bank is wound up, the Treasurer shall cause—

(a) its assets to be realized and its liabilities to be discharged out of the proceeds of the realization; and

(b) any balance remaining after paragraph (a) has been complied with to be paid into the Consolidated Fund.

By-laws.

**31**—(1) The Bank may make by-laws for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Bank may make by-laws for or in respect of—

(a) the management of the Bank and the conduct of its business;

(b) a power conferred, or a function imposed, on the Bank;

(c) the custody and use of the common seal of the Bank;

- (d) the hiring out or renting of, and access to, safe deposit facilities provided by the Bank;
- (e) the presence at meetings of the Board of officers, or officers of such classes, as are specified in the by-laws and for or in respect of their taking part in the proceedings at those meetings; and
- (f) the provision of retirement and other benefits and services for officers and former officers, their spouses, and dependants.

(3) The by-laws may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the by-laws and may provide in respect of any such offence for the imposition of a penalty not exceeding 5 penalty units.

(4) The by-laws are not statutory rules within the meaning of the *Rules Publication Act 1953*.

(5) After any by-laws have been published in the *Gazette* as required by the *Acts Interpretation Act 1931*, the Bank shall cause copies of those by-laws to be kept available for inspection by members of the public during ordinary business hours at such places as the Board determines.

(6) No charge is payable for an inspection made pursuant to subsection (5).

**32—**(1) The Governor may make regulations for the purposes <sup>Regulations.</sup> of this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for or in respect of—

- (a) prescribing a maximum amount for the purposes of section 25; and
- (b) any matter with respect to which by-laws may be made by the Bank.

(3) The regulations may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding 5 penalty units.

(4) A regulation shall, to the extent of an inconsistency with a by-law made by the Bank, prevail over that by-law.

Provisions  
applicable to by-  
laws and  
regulations.

**33**—By-laws or regulations may be made subject to such conditions, or be made so as to apply differently according to such factors as may be specified in the by-laws or regulations or according to such limitations or restrictions, whether as to time or circumstances or otherwise, as may be so specified.

## PART VI

### AMALGAMATION OF BANK WITH CERTAIN FINANCIAL INSTITUTIONS

Interpretation of  
Part VI.

**34**—In this Part, unless the contrary intention appears—  
“Banking Act” means the *Banking Act 1959* of the Commonwealth and includes the regulations made and in force under that Act;

“financial institution” means—

- (a) a building society or credit union;
- (b) a trustee bank within the meaning of the *Trustee Banks Act 1985*; or
- (c) a financial institution declared by the Governor, by order made on the recommendation of the Board, to be a financial institution for the purposes of this Part.

Preparation for  
amalgamation.

**35**—Subject to the Banking Act, where the Bank and one or more financial institutions propose to amalgamate, they shall—

- (a) draw up a draft agreement to do so; and
- (b) draw up a draft scheme of amalgamation which complies with section 36.

Scheme of  
amalgamation.

**36**—(1) A scheme of amalgamation may provide for such matters as the Bank and the financial institution or institutions proposing to amalgamate with the Bank consider necessary.

(2) A scheme of amalgamation shall be based on the principle that the Bank continues in existence and takes over the business of the financial institution or institutions involved in the amalgamation which ceases or cease to exist in the amalgamation.

**37—(1)** Where a draft agreement and a draft scheme of amalgamation have been drawn up pursuant to section 35— Agreement to amalgamate.

- (a) the Bank shall submit the draft agreement and the draft scheme of amalgamation to a meeting of the Board; and
- (b) the financial institution, or each of the financial institutions, as the case may be, proposing to amalgamate with the Bank shall submit the draft agreement and the draft scheme of amalgamation to a general meeting of the financial institution.

(2) Where a draft agreement and a draft scheme of amalgamation are submitted to meetings as provided in subsection (1) and—

- (a) the Directors, at the meeting of the Board, pass a resolution approving the draft agreement and the draft scheme of amalgamation; and
- (b) the financial institution, or each of the financial institutions, at its general meeting, approves the draft agreement and the draft scheme of amalgamation in accordance with the rules of the financial institution,

the Bank and the financial institution or institutions shall execute an agreement in accordance with the draft agreement so approved to which is annexed a scheme of amalgamation in accordance with the draft scheme of amalgamation so approved.

**38—(1)** On the execution of an agreement under section 37, the Bank and the other party or parties to the agreement shall lodge with the Commissioner— Approval of amalgamation.

- (a) a copy of the agreement with the scheme of amalgamation annexed; and
- (b) a petition to the Governor to approve the agreement.

(2) If the Commissioner is satisfied that the requirements of this Part have been complied with in respect of the agreement and scheme of amalgamation, he shall so certify and transmit the petition with his certificate to the Governor, but if he is not so satisfied, he shall, by notice in writing served on the Bank and the other party or parties to the agreement, refuse to certify that the requirements of this Part have been complied with in respect of the agreement and scheme of amalgamation.

(3) The Governor may, by order-in-council, approve the agreement and the approval shall take effect on such day as is specified in the order-in-council, being a later day than that on which the making of the order-in-council is notified in the *Gazette*.

Effect of  
amalgamation.

**39—(1)** When the Governor's approval under section 38 (3) takes effect—

- (a) all the rights of the financial institution or institutions involved in the amalgamation vest in the Bank and against the Bank may be enforced all duties and obligations of the financial institution or institutions as if they were originally its or their duties and obligations;
- (b) all the property of the financial institution or institutions involved in the amalgamation vests in the Bank and the Bank may deal with that property in the same way as a financial institution which ceased to exist in the amalgamation could have done if it had not ceased to exist and there had been no agreement to amalgamate;
- (c) the identity of the Bank, and its continuity as a Bank under this Act, is not prejudiced or affected; and
- (d) the property, and the rights and obligations, of the Bank are not affected.

(2) As soon as practicable after the notification in the *Gazette* of the making of the order-in-council referred to in section 38 (3), the Commissioner shall make such amendments to such registers kept by him, and do all such other things, as are made necessary by the amalgamation.

Special provisions  
applicable to  
land under the  
*Land Titles Act*  
*1980* and the  
*Registration of*  
*Deeds Act 1935*.

**40—(1)** When the Governor's approval under section 38 (3) takes effect, the Recorder of Titles may register an instrument relating to a prescribed estate or interest executed by the Bank if the instrument is in a registrable form, notwithstanding that the Bank is not recorded as the registered proprietor of that prescribed estate or interest in the Register kept under the *Land Titles Act 1980*.

(2) For the purposes of subsection (1), "prescribed estate or interest" means an estate or interest in land under the *Land Titles Act 1980*, which estate or interest is registered in the name of a financial institution which ceased to exist in an amalgamation.

(3) When the Governor's approval under section 38 (3) takes effect, the Bank shall lodge with the Registrar of Deeds a copy of the order-in-council referred to in section 38 (3) within a period of 14 days from the notification of the making of that order-in-council in the *Gazette* and the Registrar of Deeds shall register the copy of that order-in-council as if it were an instrument within the meaning of the *Registration of Deeds Act 1935*.

## PART VII

### PROVISIONS WITH RESPECT TO THE AMALGAMATING BODIES AND RELATED MATTERS

41—The Tasmanian Permanent Building Society incorporated under the *Building Societies Act 1876* shall, on a day before the day fixed by proclamation under section 2 (2), pay out of the funds of the society to a person who is the holder of a perpetual debenture secured on the revenues of that society the amount of principal and interest owing under that debenture to that person on that first-mentioned day.

Payment of perpetual debentures by The Tasmanian Permanent Building Society.

42—The provisions set out in Schedule 3 have effect.

Transitional provisions and savings with respect to the amalgamating bodies and other matters.

43—Part IV of the *Trustee Banks Act 1985*\* is repealed and the following Part is substituted:—

Amendment of *Trustee Banks Act 1985*.

## PART IV

### EXISTING SAVINGS BANK

9—The Hobart Savings Bank incorporated under the *Savings Banks Act 1917* shall continue in existence under this Act as a trustee bank, with no change in its accrued rights and liabilities but with the powers given, and the constitution, duties, and obligations imposed, by this Act in relation to trustee banks.

Continuation.

\*No. 18 of 1985.

Provision with respect to registration of bank named in section 9.

10—The bank named in section 9 shall be deemed to have been registered in the Register of Trustee Banks from the day fixed under section 2 (2) of this Act until it was registered by the Commissioner under this section, as in force before the day fixed under section 2 (2) of the *Tasmania Bank Act 1987*.



## SCHEDULE 1

## Section 8 (6)

## PROVISIONS WITH RESPECT TO THE MEMBERSHIP OF THE BOARD

1—Clauses 2, 4, 5, 6, and 7 do not apply to the Managing Director.

Non-application of certain provisions of Schedule to Managing Director.

2—(1) Subject to this clause, a Director shall hold office for such term, not exceeding 5 years, as is specified in the instrument of his appointment and shall be eligible for re-appointment from time to time for such term, not exceeding 5 years, as is specified in the instrument of his re-appointment.

Term of office.

(2) The following provisions apply to and in relation to the first appointments of Directors made by the Governor:—

(a) such number of those Directors as the Governor determines shall hold office for such term, not exceeding 2 years;

(b) such number of those Directors as the Governor determines shall hold office for such term, not exceeding 3 years;

(c) such number of those Directors as the Governor determines shall hold office for such term, not exceeding 4 years,

as is specified in their respective instruments of appointment.

(3) The terms of office of the persons required to be appointed as Directors as mentioned in section 8 (2) (c) shall, as far as is possible, be such as to ensure that those terms expire at evenly spaced intervals.

3—The provisions of the *Tasmanian State Service Act 1984* do not apply to or in respect of the appointment of a Director, or to or in respect of a Director in his capacity as such, during his term of office.

*Tasmanian State Service Act 1984* not to apply.

4—A Director is entitled to be paid such remuneration, expenses, and allowances as the Minister may from time to time determine in respect of him.

Allowances payable to Directors.

5—(1) Subject to subclause (2), the Minister may appoint a person to act in the office of a Director while that Director is absent from his office through illness or any other cause.

Appointment of substitute to act during absence of Director.

(2) A person appointed under subclause (1) to act in the office of a Director shall be a person who is experienced in one or more of the fields of banking, finance, business, and commerce.

(3) A Director shall, for the purposes of subclause (1), be deemed to be absent from his office if there is a vacancy in that office which has not been filled in accordance with clause 7.

(4) A person shall not be concerned to inquire whether or not any occasion has arisen requiring or authorizing a person to act in the office of a Director, and all things done or omitted to be done by that person while so acting shall be as valid, and shall have the same consequences, as if they had been done or omitted to be done by that Director.

6—(1) The office of a Director becomes vacant—

Vacation of office.

(a) when the term for which he was appointed to hold office expires;

(b) when he dies;

(c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;

- (d) if he is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to him, either personally or in the ordinary course of post, unless on leave granted by the Board or unless, before the expiration of 3 weeks after the last of those meetings, he is excused by the Board for his absence from those meetings;
- (e) if he becomes liable to be detained under the *Mental Health Act 1963* in a hospital, being a hospital within the meaning of section 3 (1) of that Act;
- (f) if he is convicted of a crime or an offence in this State which is punishable by imprisonment for a term of 6 months or more, or has been convicted elsewhere than in this State of a crime or an offence which, if committed in this State, would be a crime or an offence so punishable;
- (g) if he resigns his office by writing under his hand addressed to the Governor; or
- (h) if he is removed from office by the Governor under subclause (2).

(2) The Governor may remove a Director from office—

- (a) for misbehaviour or incompetence; or
- (b) where he is satisfied that that Director has participated in or connived at any act that resulted in the Bank not being managed in an effective, efficient, or economical manner.

(3) Without prejudice to the generality of the expression “misbehaviour” in subclause (2), a Director is guilty of misbehaviour if he fails, without reasonable excuse, to comply with his obligations under section 9.

Filling of vacancies.

7—On the occurrence of a vacancy in the office of a Director, otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to the vacant office for the residue of his predecessor’s term of office, being a person who is experienced in one or more of the fields of banking, finance, business, and commerce.

Validity of proceedings.

8—All acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of any Director or that any person was disqualified from acting as, or incapable of being, a Director, as valid as if the Director had been duly appointed and was qualified to act as, or capable of being, a Director, and as if the Board had been fully constituted.

Presumptions.

9—In any proceedings by or against the Board, unless evidence is given to the contrary, no proof shall be required of—

- (a) the constitution of the Board;
- (b) any resolution of the Board;
- (c) the appointment of any Director; or
- (d) the presence of a quorum at any meeting of the Board.

## SCHEDULE 2

## Section 8 (7)

## PROVISIONS WITH RESPECT TO MEETINGS OF THE BOARD

1—Meetings of the Board may be convened by the chairman or by any Convening of meetings of Board.  
2 Directors.

2—(1) A number of Directors that exceeds one-half of the total number of Directors shall form a quorum at a duly convened meeting of the Board. Procedure at meetings.

(2) A duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.

(3) A question arising at a meeting of the Board shall be determined by a majority of votes of the Directors present and voting.

3—(1) The chairman shall preside at all meetings of the Board at which he is present. Chairman.

(2) If the chairman is not present at a meeting of the Board, the deputy chairman or, if he is also absent from the meeting, such other Director, as the Directors present elect, shall preside at that meeting.

(3) The chairman or other Director presiding at a meeting of the Board has a deliberative vote only and, in the event of an equality of votes on a question before the Board, the question shall be deemed not to have been put.

4—The Board shall cause full and accurate minutes to be kept of its meetings. Minutes.

5—The procedure for the calling of, and for the conduct of business at, meetings of the Board shall, subject to any procedure that is specified in this Schedule, be as determined by the Board. General procedure.

6—Such officers, or officers of such classes, as are specified in the by-laws may— Right of officers to be present at meetings of Board.

(a) be present at such meetings of the Board as are specified in the by-laws; and

(b) take part in the proceedings at those meetings as provided for in the by-laws.

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## SCHEDULE 3

## Section 42

TRANSITIONAL PROVISIONS AND SAVINGS WITH RESPECT TO THE  
AMALGAMATING BODIES AND OTHER MATTERS

Interpretation.

1—In this Schedule, unless the contrary intention appears—

“commencement day” means the day fixed by proclamation under section 2 (2);

“undertaking”, in relation to an amalgamating body, means—

(a) all property of that body;

(b) all rights and liabilities of that body; and

(c) all operations carried on by that body.

Abolition of the  
bodies corporate  
of the  
amalgamating  
bodies, &c.

2—(1) On the commencement day—

(a) the body corporate of—

(i) the building society is abolished, notwithstanding section 29 of the *Building Societies Act 1876*; and

(ii) the other amalgamating body is abolished;

(b) in the case of an amalgamating body that is the trustee bank—

(i) the general council of that bank is abolished;

(ii) each of the persons who, immediately before that day, hold office as members of that general council ceases to hold such an office; and

(iii) each of the persons who, immediately before that day, hold office as directors of that bank ceases to hold such an office; and

(c) in the case of an amalgamating body that is the building society—

(i) the board of directors of that society is abolished; and

(ii) each of the persons who, immediately before that day, hold office as directors of that society ceases to hold such an office.

(2) As soon as practicable after the commencement day, the Commissioner shall make such amendments to such registers kept by him, and do all such other things, as are necessary as a consequence of the enactment of this Act and the abolition of the body corporate of the trustee bank and the body corporate of the building society.

Special provisions  
in relation to the  
building society.

3—On the commencement day—

(a) each of the persons who, immediately before that day, are members of the building society ceases to be such a member; and

(b) a share in the capital of the building society held by that person immediately before that day is converted into an account in the Bank containing an amount equal to the paid up amount of the share immediately before that day.

4—(1) On the commencement day, the undertaking of each of the amalgamating bodies is vested in the Bank. Vesting of undertakings of amalgamating bodies in the Bank.

(2) On and after the commencement day, unless the contrary intention appears—

(a) a reference in an instrument made, passed, or executed before that day to an amalgamating body shall be construed as a reference to the Bank;

(b) a reference in an instrument made or executed before that day to the holder for the time being of a particular office, other than—

(i) an office in respect of an amalgamating body referred to in clause 2 (1) (b) (ii) or (iii);

(ii) the office of a member referred to in clause 3 (a); or

(iii) the office of a secretary, or auditor, within an amalgamating body,

shall be construed as a reference to the person for the time being holding office as Managing Director or such officer of the Bank as is designated from time to time by the Managing Director or by an officer of the Bank acting under delegation from him; and

(c) a reference in any other Act or in any regulation, rule, by-law, or other statutory instrument to an amalgamating body shall be construed as a reference to the Bank.

(3) On and after the commencement day, any place of business of an amalgamating body, wherever located, shall be deemed to be a place of business of the Bank.

(4) No liability to any duty under the *Stamp Duties Act 1931* attaches to the Bank or its property by virtue of the vesting in the Bank, pursuant to subclause (1), of the undertakings of the amalgamating bodies.

5—(1) Without prejudice to the generality of other provisions of this Schedule, the following provisions have effect on and after the commencement day:— Transfer of businesses of amalgamating bodies to the Bank.

(a) any instruction, order, direction, mandate, or authority given to an amalgamating body and subsisting immediately before the commencement day shall be deemed to have been given to the Bank;

(b) an instrument given or addressed to an amalgamating body before, on, or after the commencement day shall be deemed to have been given or addressed to the Bank;

(c) a security held by an amalgamating body as security for a debt or other liability to that amalgamating body—

(i) incurred before the commencement day, shall be available to the Bank as security for the discharge of that debt or liability; and

(ii) where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts owed to or liabilities to the Bank which are incurred on or after the commencement day;

(d) the Bank shall, in relation to a security referred to in paragraph (c), be entitled to all the rights and priorities and be subject to all liabilities to which the amalgamating body holding the security would have been subject if this Act had not been enacted;

- (e) subject to subclause (2), nothing effected by this Schedule affects or prejudices the terms and conditions of a security referred to in paragraph (c);
- (f) all the rights and liabilities of an amalgamating body as bailee of documents or chattels shall be transferred to and assumed by the Bank;
- (g) subject to section 41, a negotiable instrument or order for payment of money which, before the commencement day, is drawn on, given to, or accepted or endorsed by an amalgamating body or payable at a place of business of an amalgamating body and which is in force immediately before that day shall have the same effect on and after the commencement day as if it had been drawn on, given to, or accepted or endorsed by the Bank instead of that amalgamating body or was payable at the place of business of the Bank which the first-mentioned place of business is by this Schedule deemed to be;
- (h) subject to clause 3, the relationship between an amalgamating body and a customer of the amalgamating body shall become the same relationship between the Bank and that customer and, subject to that clause and paragraph (i), the same rights and liabilities, including rights of set-off, shall exist between the Bank and the customer as existed immediately before the commencement day between that amalgamating body and the customer;
- (i) a person who, immediately before that day, is a customer of—
  - (i) the trustee bank by virtue of having an account with the trustee bank; or
  - (ii) the building society by virtue of having a share in the capital of the building society, being a share that, on that day, is converted into an account with the Bank as mentioned in clause 3 (b),is entitled only to the amount of money that, from time to time, is in that account, together with interest on that amount and together with any other amounts in relation to that account that are the subject of a contract between the Bank and that person;
- (j) all contracts, agreements, conveyances, deeds, leases, licences, other instruments, undertakings, and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to an amalgamating body (whether alone or with any other person) before the commencement day and in effect immediately before the commencement day shall, to the extent that they were previously binding on and enforceable by, against, or in favour of that amalgamating body, be binding on and enforceable by, against, or in favour of the Bank as fully and effectually in every respect as if, instead of that amalgamating body, the Bank had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be;
- (k) legal proceedings instituted by or against an amalgamating body before, and pending at, the commencement day shall not abate or otherwise be prejudiced by reason of the enactment of this Act;

(l) nothing effected by this Schedule—

- (i) shall be regarded as placing the Bank in breach of contract or confidence or as otherwise making it guilty of a civil wrong;
- (ii) shall be regarded as placing the Bank in breach of any Act or other law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
- (iii) shall release any surety or guarantor wholly or in part from all or any of his obligations;

(m) nothing done or suffered by the Bank pursuant to this Schedule (not being something effected by this Schedule)—

- (i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong;
- (ii) shall be regarded as a breach of any Act or other law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
- (iii) shall release any surety or guarantor wholly or in part from all or any of his obligations,

if it would not have had that effect had it been done or suffered by an amalgamating body if this Act had not been enacted.

(2) Notwithstanding the abolition of the body corporate of the building society, any rules made by the building society under the *Building Societies Act 1876*—

- (a) that are in force immediately before the commencement day; and
- (b) that make provision for changes in the rate of interest on a security held by the building society as security for a debt or other liability to the building society, being a security that is available to the Bank as mentioned in subclause (1) (c),

shall remain in force on and after that day and shall be deemed to be by-laws which the Bank has made under section 31 and as if it had been authorized to make those by-laws under that section.

6—(1) Legal proceedings to which an amalgamating body is a party immediately before the commencement day—

Continuity of  
legal proceedings,  
&c.

- (a) may be continued by or against the Bank;
- (b) may be discontinued in the name of the Bank; or
- (c) may be settled in the name of the Bank.

(2) A judgment, order, or award obtained by or against an amalgamating body in legal proceedings commenced before the commencement day may be enforced by or against the Bank.

(3) Where—

- (a) an amalgamating body has a right or cause of action against a person in respect of which the amalgamating body has not instituted an action or legal proceedings against that person before the commencement day, the Bank has, on and after that day, that right or cause of action against that person and may, subject to the *Limitation Act 1974*, institute an action or legal proceedings against that person in respect of that right or cause of action; and

- (b) a person has a right or cause of action against an amalgamating body in respect of which that person has not instituted an action or legal proceedings against the amalgamating body before that day, that person has, on and after that day, that right or cause of action against the Bank and may, subject to that Act, institute an action or legal proceedings against the Bank in respect of that right or cause of action.

Evidence.

7—(1) Documentary or other evidence which would have been admissible for or against the interests of an amalgamating body if this Act had not been enacted shall be admissible for or against the interests of the Bank.

(2) Notwithstanding the transfer of the undertaking of the trustee bank to the Bank, the provisions of Division 2 of Part III of the *Evidence Act 1910* shall continue to apply with respect to the bankers' books of the trustee bank and to entries made in those bankers' books before the commencement day as if they were respectively the books of the Bank and entries in those books.

(3) For the purposes of the application of subclause (2) to the building society, any books and records of information used in the ordinary business of the building society before the commencement day, being books and records that would have been bankers' books if they had been kept before that day by the trustee bank, shall be deemed to be bankers' books.

(4) In this clause, "bankers' books" has the same meaning as in the *Evidence Act 1910*.

Transfer of employees of amalgamating bodies to Bank.

8—(1) On the commencement day, each employee of an amalgamating body ceases to be an employee of that amalgamating body and becomes an officer of the Bank but, for the purposes of every Act, law, award, determination, contract, and agreement relating to the employment of each such employee, his contract of employment shall be deemed to be unbroken and the period of his service with that amalgamating body shall be deemed to have been a period of service with the Bank.

(2) The terms and conditions of the employment of each transferred employee with the Bank shall—

- (a) on the commencement day (and thereafter until varied) be identical with the terms and conditions of his employment with the amalgamating body by which he was employed immediately before the commencement day and be capable of variation in the same manner as they were immediately before that day; and
- (b) subject to any Act or other law, award, or determination relating to those terms and conditions, also be capable of variation in the same manner as the general terms and conditions of employment of other persons employed by the Bank are capable of variation.

(3) A transferred employee is not entitled to receive any payment or other benefit by reason only of his ceasing by virtue of this Schedule to be an employee of an amalgamating body.

(4) Nothing in this Act affects—

- (a) the continuity of service of an employee of an amalgamating body who becomes a transferred employee;
- (b) the rights with respect to long service leave, annual leave, and sick leave or any of them accrued by such an employee immediately before the commencement day; or



(c) the right of such an employee to an allowance payable to him by an amalgamating body immediately before that day.

(5) Nothing in this Act, other than subclause (3), affects rights or liabilities under any provident, benefit, superannuation, or retirement fund or scheme relating to employees of an amalgamating body.

(6) On the commencement day, the Bank becomes the trustee of any provident, benefit, superannuation, or retirement fund or scheme relating to employees of an amalgamating body.

(7) The Board may appoint any of the Directors and such other persons, if any, as it determines as the trustees of any fund or scheme referred to in subclause (6) in place of the Bank.

(8) A director, secretary, or auditor of an amalgamating body does not, by virtue of the enactment of this Act, become a director, secretary, or auditor of the Bank.

(9) The general manager or principal officer of an amalgamating body does not, by virtue of the enactment of this Act, become the general manager or principal officer of the Bank.

(10) For the purposes of this clause, "transferred employee" means an employee of an amalgamating body who becomes an officer of the Bank in pursuance of subclause (1).

9—(1) Where any estate or interest in land under the *Land Titles Act 1980* is, by virtue of this Schedule, vested in the Bank, the Bank shall, notwithstanding any provision of that Act to the contrary, be deemed to be the registered proprietor of that estate or interest and may deal with it accordingly.

Special provisions applicable to land and caveats under *Land Titles Act 1980* and land under *Registration of Deeds Act 1935*.

(2) The Recorder of Titles may register an instrument relating to an estate or interest in land referred to in subclause (1) executed by the Bank if the instrument is in a registrable form, notwithstanding that the Bank is not recorded as registered proprietor of that estate or interest in the Register kept under the *Land Titles Act 1980*.

(3) A caveat lodged under the *Land Titles Act 1980* by an amalgamating body that is in force immediately before the commencement day continues in force, on and after that day, as a caveat lodged by the Bank.

(4) Where any estate or interest in land to which the *Registration of Deeds Act 1935* applies is, by virtue of this Schedule, vested in the Bank, an instrument dealing with that estate or interest may, if executed by the Bank, and if otherwise in a registrable form be registered by the Registrar of Deeds, notwithstanding that no instrument formally vesting that estate or interest in the Bank has been registered under that Act.

10—(1) On the commencement day, the Bank becomes the trustee of the public superannuation funds established by the building society that are in existence immediately before that day.

Special provisions applicable to certain public superannuation funds.

(2) The Bank shall, on and after the commencement day, administer the public superannuation funds referred to in subclause (1).

(3) Nothing in this Act affects rights or liabilities arising under the public superannuation funds referred to in subclause (1).

Indemnity &c.

11—(1) On and after the commencement day—

(a) nothing effected by this Schedule shall—

(i) place a person who, immediately before that day, holds a prescribed office in breach of contract or confidence or in breach of trust or otherwise make him guilty of a civil wrong or a breach of trust; or

(ii) place that person in breach of any Act or other law, contractual provision, or trust prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; and

(b) no action or legal proceeding may be instituted against, and no claim or demand may be made to, a person referred to in paragraph (a) by or in favour of any other person in respect of anything effected by this Schedule.

(2) Nothing in subclause (1) prevents a person from—

(a) instituting any action or legal proceeding on or after the commencement day; or

(b) continuing any action or legal proceeding on or after that day, against another person who, immediately before that day, holds a prescribed office in respect of any matter arising out of the exercise of the powers conferred on that other person, or the performance of the functions imposed on him, by virtue of holding that office or any other matter relating to the administration, or intended administration, of a trust pursuant to holding that office.

(3) On and after the commencement day, no action or legal proceeding may be instituted against, and no claim or demand may be made to, a person referred to in paragraph (a) of subclause (1), or any other person, by or in favour of a person in respect of any dealings by that person so referred to in that paragraph or that other person in relation to the negotiations for the enactment of this Act and the giving effect to its provisions.

(4) On and after the commencement day, no action or legal proceeding may be instituted against, and no claim or demand may be made to, the Bank by or in favour of a person who is a customer by virtue of having an account with the Bank other than an action or legal proceeding, or a claim or a demand, with respect to the amount of money that, from time to time, is in that account, interest on that amount, and any other amounts in relation to that account that are the subject of a contract between the Bank and that person.

(5) In this clause, “prescribed office” means—

(a) the office of a director of an amalgamating body;

(b) in the case of an amalgamating body that is the trustee bank, a member of the general council of that bank; or

(c) the office of trustee of a public superannuation fund referred to in clause 10 (1).