

1910.

THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES.

Read 1^o, 15th September, 1910.*(Brought from the Senate.)*

A BILL

FOR

AN ACT

Authorizing any Joint Stock Banking Company formed or incorporated in any State to form Reserve Funds for the express purpose of providing or accumulating Funds to protect the Shareholders in such Banking Companies against their liability in respect of the uncalled capital or reserve liabilities on their shares, and to provide for the creation of Corporate Bodies in which such Reserve Funds may be vested.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1. This Act may be cited as the *Commonwealth Banking Companies Reserve Liabilities Act 1910.* Short title.

2. The words "Joint Stock Banking Company" and "Company" Interpretation. in this Act mean any company consisting of seven or more members whose principal or only business is that of banking now or hereafter formed or incorporated as a company in pursuance of any Act of Parliament of the Commonwealth or of any State or being otherwise duly constituted by the law of the Commonwealth or of any State and having a permanent paid-up capital of not less than One hundred thousand pounds divided into one class of shares of fixed amount and formed on the principle of having for its members the holders of shares of such capital and no other person.

[C.13]—400/15.9.1910.—F.8956.

3. "Net

Definition of
"net profits."

3. "Net profits" means the profit made after full and due provision for current expenditure has been made, and does not include the proceeds from the realisation of assets or the conversion of reserves or any portion of reserves.

Creation of
reserve fund.

4. From and after the passing of this Act it shall be lawful for any Joint Stock Banking Company to form a reserve fund for the purpose of protecting its shareholders against their liabilities in respect of the uncalled capital (if any) and the reserve liabilities (if any) on the shares held by them in such company and to pay and to carry to the credit of such reserve fund such sums out of the net profits of the Banking Company made after the passing of this Act in any half-year and such premiums from the sale after the passing of this Act of new shares and proceeds of sale of shares forfeited after the passing of this Act and such sums (if any) representing the recovery after the passing of this Act of debts previously written off as bad from time to time (as shall be determined by the company in general meeting). No transfer shall be made to the said reserve fund from any other reserve fund, nor shall any reserve fund formed for the purpose of providing for occasional losses be used for any other purpose.

Appointment of
trustees.

5. Any Joint Stock Banking Company before carrying any moneys to the credit of such reserve fund shall appoint by deed under its common seal not more than five nor less than three trustees of such reserve fund, but of these not more than one shall be a director, and all of them shall have been previously approved by the company in general meeting assembled by a three-fifths majority of the shareholders present in person and voting at such meeting, and as soon as such trustees have been so appointed their appointment shall be notified in the *Commonwealth Gazette* under the name of the president, or governor, or chairman and the general manager or the manager for the time being of the company, and immediately upon such notification and from thenceforth the said trustees shall be and they are hereby constituted a body corporate by the name of incorporation mentioned in such notification and shall have perpetual succession and a common seal and power to sue and be sued in their corporate name and to hold and acquire and to convey and assign any present or future property belonging to or held for the purpose of the trust fund subject to the provisions hereinafter contained. "Trustee" within the meaning of this section includes a public trustee company.

Investment of
moneys.

6. The moneys from time to time carried to the credit of such reserve fund shall be invested by the said trustees in Government stock or Government securities of the Commonwealth or of any State or of the United Kingdom or of the Dominion of New Zealand or in any securities the principal and interest of which is or shall be guaranteed by the Parliament of the Commonwealth or of any State or of the United Kingdom or of the Dominion of New Zealand but not in any other mode of investment, and any such investments may from time to time be varied for others of the same nature.

7. The

7. The income of such reserve fund and the investments representing or constituting the same less the costs charges and expenses of administering the said reserve fund including the payment to the trustees and auditors (if any) by way of remuneration for their services of such a sum as the company in general meeting may from time to time determine shall be accumulated by the trustees of such reserve fund at compound interest by investing the same and the resulting income thereof in any of the authorized investments in augmentation until the aggregate nominal amount of such reserve fund shall exceed in value by ten per centum the aggregate nominal amount of the total uncalled capital and reserve liabilities on the shares in the company, and thereafter the income arising from such reserve fund less such costs charges and expenses as aforesaid shall be paid half-yearly to the company and shall be available for the payment of dividends by the company.

Accumulation
of funds.

8. Such reserve fund and the investments representing or constituting the same and the income thereof shall be and are hereby charged in priority to all other claims thereon other than in respect of note circulation (if any) of the banking company as is by Act of Parliament of the Commonwealth or of any State made a first charge on the assets of the company with the payment to the company or in the event of the winding up of the same to its liquidator of the respective amounts due by the shareholders to the company in respect of uncalled capital and statutory reserve liabilities (if any) on the shares respectively held by them in the company, and accordingly such reserve fund and the investments constituting or representing the same and the income thereof shall not be capable of being charged pledged or attached for the payment of any liability of the company other than in respect of such note circulation as aforesaid except subject to and charged with the payment to the company or its liquidator of the uncalled capital and the reserve liabilities on the shares of the company, nor shall the same be available for the payment of any of the liabilities of the company unless and until the whole amount due by the shareholders to the company in respect of uncalled capital and statutory reserve liabilities (if any) on the shares respectively held by them in the company shall have been previously paid to the company or its liquidator.

Priority of
payment.

9. Contracts on behalf of the trustees of such trust fund may be made as follows (that is to say) :—

Contracts, how
evidenced.

- (1) Any contract which if made between private persons would be by law required to be in writing and under seal may be made on behalf of the trustees in writing under the common seal of the trustees and such contract may be in the same manner varied or discharged.
- (2) Any contract which if made between private persons would be by law required to be in writing and signed by the party to be charged therewith may be made on behalf of the trustees in writing signed by any person acting under the express or implied authority of the trustees and such contract may in the same manner be varied or discharged.

(3) Any

- (3) Any contract which if made between private persons would by law be valid although made by parole only and not reduced into writing may be made by parole on behalf of the trustees by any person acting under the express or implied authority of the trustees and such contract may in the same way be varied or discharged. 5

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the trustees and their successors and all other parties thereto their heirs executors or administrators as the case may be. 10

Half-yearly reports.

10. The trustees of such reserve fund shall every half-year issue a report to the company showing the state and condition and amount of the investments constituting or representing the trust fund and such report shall be attached to and published half-yearly or yearly as the case may be with the published report of the company. 15

Removal of trustees.

11. The directors of the company may with the approval of the company previously given in general meeting, three-fifths of the shareholders present approving, by deed under the common seal of the company remove any trustee or trustees being a member of a body corporate of trustees constituted under this Act whom they shall consider it desirable or expedient to remove. 20

Vacancies, how filled.

12. Any vacancy occurring by the death resignation or removal of a trustee being a member of a body corporate of trustees constituted under this Act shall be filled up temporarily by the directors for the time being of the company by deed under the common seal of the company, and the filling up of the said vacancy shall be notified in the *Commonwealth Gazette* under the hand of the president or governor or chairman and the general manager or the manager for the time being of the company within thirty days after the vacancy shall be so filled up as aforesaid. Such appointment as a permanency shall be subject to the approval of the company in its first subsequent general meeting. 25
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