



ANALYSIS

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1982, No. 144

An Act to consolidate and amend the Banking Act 1908

[16 December 1982]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Banking Act 1982.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Bank” means any person, partnership, corporation, or company carrying on in New Zealand the business of banking:

“Bank holiday” means a day on which, by virtue of the provisions of section 10 of this Act, a bank need not open for business:

“Business records” includes any books, documents, records, forms, cards, tape, disc, or electronic or storage media, on which any information relating to the business of the bank is entered, recorded, or stored:

“Charter” of a bank means the enactment, deed of settlement, memorandum of association, or other instrument by or under which the bank is incorporated; and includes all amendments of such instrument, and also all articles of association, bylaws, rules, and regulations providing for the administration of the bank:

“Court” means the High Court or a District Court; and includes a Judge of the High Court or a District Court Judge:

“Legal proceeding” means any civil or criminal proceeding or inquiry, and includes an arbitration:

“Officer”, in relation to a bank, includes—

(a) The General Manager or any person occupying the position of General Manager by whatever name called; and

(b) Any person occupying a managerial position by whatever name called in the bank or any branch of the bank:

“Special bank holiday” or “part holiday” means a day or any portion of a day (as the case may be) appointed pursuant to section 11 of this Act as a special bank holiday or part holiday.

Cf. 1908, No. 11. s. 2

3. Transfer of bank shares—(1) Notwithstanding anything in the charter of any bank, no transfer of shares of any bank on which there is any liability shall be complete or shall operate to vest those shares in any person, or to relieve the transferor from liability in respect thereof, until such transfer is approved of in writing by the directors of the bank.

(2) Subsection (1) of this section shall be sufficient authority to the directors to refuse their approval to any transfer of shares on which there is any liability, without assigning any reason therefor.

(3) If the branch register upon which any such transfer is to be recorded is kept in any country other than the country in which the head office of the bank is situated, the directors of the bank may, if they think fit, delegate to a duly appointed attorney or attorneys, with power to act jointly or severally, the duty of approving or disapproving in writing such transfer and of registering the same upon such branch register, and the approval of such transfer by such attorney or attorneys shall take the place of the approval by the directors of the bank required by this or any other Act, and shall be as valid to complete any transfer of shares and to relieve the transferor

from liability as if such transfer had been approved by the directors themselves.

(4) Where any bank has before the coming into operation of this Act delegated to any attorney or attorneys the duty of approving or disapproving any such transfer and of registering the same upon any branch register, and such transfer has been approved by such attorney or attorneys and registered upon such branch register, such approval shall be as valid and effectual to complete such transfer and relieve the transferor from liability as if such transfer had been approved by the directors themselves before being registered.

Cf. 1908, No. 11, s. 6

4. Certificate as to shareholder—Subject to any other enactment or rule of law, a certificate given by one or more of the directors of a bank, or the secretary or a duly authorised officer of a bank, or the attorney or attorneys of the bank, specifying any shares held by any person, shall be prima facie evidence of the title of such person to the shares therein specified.

Cf. 1908, No. 11, s. 7

5. Proof of entries in business records of banks—

(1) Notwithstanding anything in any enactment or rule of law, but subject to the provisions of this section, a copy of any entry in the business records of a bank shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions, and accounts therein recorded.

(2) Such copy shall not be received in evidence under this Act unless it is first proved—

(a) That the business record was at the time of the making of the entry one of the ordinary business records of the bank, and that the entry was made in the usual and ordinary course of business, and that the business record is in the custody or control of the bank; and

(b) That the copy has been compared with the original entry and is correct.

(3) Notwithstanding anything in any enactment or rule of law, but subject to the provisions of subsection (4) of this section, a document certified by an officer of the bank to be a record of an entry in the business records of a bank and which is produced in the usual and ordinary course of producing such records by a device by means of which information is

entered, recorded, or stored, shall, in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions, and accounts therein recorded.

(4) A document certified in accordance with subsection (3) of this section shall not be received in evidence under that subsection unless it is first proved that the business record was at the time of making of the entry one of the ordinary business records of the bank, and that the entry was made in the usual and ordinary course of business, and that the business record is in the custody or control of the bank or available to the bank.

Cf. 1908, No. 11, s. 19 (1), (2)

6. Officer not compellable to produce business records—An officer of a bank shall not, in any legal proceedings to which the bank is not a party, be compellable either to produce any business record of the bank the contents of which can be proved pursuant to section 5 of this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a Court made for special cause.

Cf. 1908, No. 11, s. 20

7. Court may order inspection—(1) On the application of any party to a legal proceeding a Court may, on summons, order that such party be at liberty to inspect and take copies of any entries in the business records of a bank for any of the purposes of such proceeding.

(2) An order under this section shall be served on the bank not less than 3 clear days before the same is to be obeyed, unless the Court directs otherwise.

(3) Saturday, Sunday, and any bank holiday, special bank holiday, or part holiday shall be excluded from the computation of time under this section.

(4) The costs of any application to a Court under or for the purposes of this section, and the costs of anything done or to be done under an order of a Court made under or for the purposes of this section, shall be in the discretion of the Court.

(5) Where any such costs have been occasioned by any default or delay on the part of the bank, the Court may order that the same or any part thereof be paid to any party by the bank.

(6) Any such order against a bank may be enforced as if the bank were a party to the proceeding.

Cf. 1908, No. 11, s. 21

8. Saving of power of Auditor-General to inspect private accounts—Nothing in this Act shall limit or affect the powers of the Controller and Auditor-General under any other Act.

Cf. 1908, No. 11, s. 22

9. Banking hours—(1) Except on bank holidays, or on special bank holidays or part holidays, and except as provided in this section, the business premises of every bank, other than an agency or receiving agency, shall be open for business from 10 o'clock in the morning to 3 o'clock in the afternoon on every day of the week other than Saturday and Sunday.

(2) Nothing in subsection (1) of this section shall prevent the business premises of a bank from being open at any other time that such premises may lawfully be open.

(3) Where the number of the staff employed on any bank premises does not exceed 5, the premises may be closed for one hour on each day, between noon and 2 o'clock in the afternoon.

(4) The business premises of a bank may, with the previous consent in writing of the Minister of Finance, close for business on any day or for any part of a day during which such business premises would otherwise be required under this section to be open for business. Any such consent may be given on such terms and conditions as the Minister of Finance thinks fit.

(5) For the purposes of this section “bank” means the Reserve Bank and every trading bank named in the First Schedule to the Reserve Bank of New Zealand Act 1964.

10. Bank holidays—(1) Subject to subsection (2) of this section, a bank need not open for business on any of the several days mentioned in the First Schedule to this Act.

(2) Where any of the days mentioned in the First Schedule to this Act falls on either a Saturday or a Sunday, the next following business day shall be a day on which the bank need not open for business.

(3) Where such next following business day is one of the days mentioned in the First Schedule to this Act, the business day next following that day shall also be a day on which the bank need not be open for business.

(4) Nothing in subsection (2) of this section shall apply with respect to Anzac Day or Waitangi Day, as the case may be, when Anzac Day or Waitangi Day falls on a Saturday or a Sunday.

Cf. 1908, No. 11, s. 23; 1935, No. 23, s. 3

11. Special bank holidays—With the previous consent in writing of the Minister of Finance, but not otherwise, the Managing Director, General Manager, or other chief officer in New Zealand for the time being of any bank may, by writing under his hand, appoint any day or portion of a day as a special bank holiday or part holiday at the bank under his direction or control, and such holiday or part holiday may be observed at any specified place or places in which the bank carries on business within New Zealand, subject to the provisions following, that is to say:

- (a) Any day or portion of a day so appointed shall be notified by public advertisement, purporting to be by proper authority, not less than 2 times within the 7 days immediately preceding such day, in some newspaper circulating in the district in which the holiday or part holiday is to be observed:
- (b) Notice of the holiday or part holiday shall be displayed in a front window or on or near the main entrance door of the building in which the bank carries on its business, at the place or places where the holiday or part holiday is to be observed, for at least 3 days before such day:
- (c) The production of a newspaper containing any such advertisement shall be prima facie proof that the holiday or part holiday was duly appointed to be observed at the place or places specified in that advertisement:
- (d) Such day shall be a special bank holiday or part holiday only at the particular bank or banks specified in the notice hereby required:
- (e) Bills of exchange or promissory notes due on a part holiday shall be payable on that day within the business hours during which the bank is open.

Cf. 1908, No. 11, s. 24 (a)–(e), (g)

12. Destruction of documents—(1) Subject to this section, every bank—

- (a) Shall retain, until the expiration of the period of 7 years specified in subsection (2) (a) of this section, every cheque or bank draft which comes into its possession and which is drawn on that bank; and may thereafter destroy it:
- (b) Shall retain, until the expiration of the period of 7 years specified in subsection (2) (a) of this section, every bill of exchange or promissory note which comes

into its possession and which is made payable at that bank; and may thereafter destroy it:

- (c) Shall retain, until the expiration of the period of 7 years specified in subsection (2) (b) of this section, every voucher used in connection with account transactions at a bank or branch of a bank (including every deposit or withdrawal slip); and may thereafter destroy it.

(2) For the purposes of subsection (1) of this section,—

- (a) The period applicable in respect of a document to which paragraph (a) or paragraph (b) of that subsection applies shall be—

- (i) In the case of a document payable on demand, the period of 7 years beginning with the date of the document; and

- (ii) In the case of any other document, the period of 7 years beginning with the due date of the document; and

- (b) The period applicable in respect of a voucher to which paragraph (c) of that subsection applies, shall be the period of 7 years beginning with the date of the transaction to which the voucher relates.

(3) It shall be sufficient compliance with the duty to retain imposed by subsection (1) of this section if a copy of the document has been made by the bank on microfilm, microfiche, tape, disc, or electronic or photographic storage media, and is retained by the bank for the same period as that document is required to be retained pursuant to subsection (1) of this section.

(4) Notwithstanding subsections (1) to (3) of this section, no document shall be destroyed under the authority of this section at any time—

- (a) Within 2 years after the date thereof in the case of documents payable on demand, or after the due date thereof in the case of other documents:

- (b) In the case of vouchers, within 2 years after the transaction to which the voucher relates:

- (c) At any time after a demand for the delivery of such document has been made to the bank by the person entitled thereto.

(5) Notwithstanding any enactment or rule of law, a copy of a document made pursuant to this section shall be admissible in evidence in any legal proceedings to the same extent as the document of which it is a copy would have been admissible.

(6) This section shall apply to cheques, drafts, bills, and promissory notes received by a bank and vouchers in the possession of a bank either before or after the coming into operation of this Act.

Cf. 1908, No. 11, s. 26

13. Amendment to Public Finance Act 1977—The Public Finance Act 1977 is hereby amended by inserting, after section 28, the following section:

“28A. **Power to inspect bank accounts**—(1) For the purpose of fulfilling any function or duty lawfully conferred or imposed on it, the Audit Office may examine or audit the account of any person in any bank and for that purpose may:

“(a) Require any officer of the bank to produce such account and supply any information relating thereto in the possession of the bank or under its control:

“(b) Take copies of such account and any documents relating thereto in the possession of the bank or under its control.

“(2) The powers conferred on the Audit Office by subsection (1) of this section shall not be exercised by the Audit Office in relation to the account of any person in any bank unless the Controller and Auditor-General certifies in writing to that bank that he has reason to believe, and does believe, that public money, or money belonging to a Government agency of which the Audit Office is auditor, or a local authority, has been fraudulently or wrongfully paid into that account.

“(3) For the purpose of this section ‘bank’ means a bank within the meaning of the Banking Act 1982.”

14. Consequential amendments—The enactments listed in the Second Schedule to this Act are hereby consequentially amended.

15. Repeals—The enactments listed in the Third Schedule to this Act are hereby repealed.

SCHEDULES

FIRST SCHEDULE

Section 10 (1), (2)

BANK HOLIDAYS

Anniversary Day in the locality where the bank or branch is situated New Year's Day The day after New Year's Day Good Friday Easter Monday	Anzac Day Christmas Day Boxing Day The Sovereign's Birthday Labour Day Waitangi Day
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Section 14

SECOND SCHEDULE

ENACTMENTS CONSEQUENTIALLY AMENDED

Enactment	Amendment
1873, No. 1 (Private)—The National Bank of New Zealand (Limited) Act 1873	By omitting from the Title the words "and issue notes".
1948, No. 62—The Trustee Savings Banks Act 1948 (Reprinted 1973, Vol. 2, p. 1663)	By repealing section 38A (1), and substituting the following subsection: “(1) The provisions of sections 5 to 8 of the Banking Act 1982 shall apply with respect to trustee savings banks.”
1959, No. 30—The Post Office Act 1959 (Reprinted 1970, Vol. 3, p. 2155)	By repealing section 118A (1), and substituting the following subsection: “(1) The provisions of sections 5 to 8 of the Banking Act 1982 shall apply with respect to the Post Office Savings Bank.”
1964, No. 9—The Private Savings Banks Act 1964	By repealing section 24 (3), and substituting the following subsection: “(3) The provisions of sections 5 to 8 of the Banking Act 1982 shall apply to private savings banks.”
1964, No. 134—The Reserve Bank of New Zealand Act 1964 (Reprinted 1974, Vol. 3, p. 2439)	By repealing section 47, and substituting the following section: “47. Application of Banking Act to Reserve Bank —(1) Sections 5 to 12 of the Banking Act 1982 shall apply with respect to the Reserve Bank.

SECOND SCHEDULE—*continued*ENACTMENTS CONSEQUENTIALLY AMENDED—*continued*

Enactment	Amendment
1964, No. 134—The Reserve Bank of New Zealand Act 1964 (Reprinted 1974, Vol. 3, p. 2439)— <i>continued</i>	“(2) Except as provided in subsection (1) of this section, the provisions of the Banking Act 1982 shall not apply with respect to the Reserve Bank.”
1974, No. 133—The Inland Revenue Department Act 1974	By omitting from section 21 (14) the words “section 19 of the Banking Act 1908”, and substituting the words “section 5 of the Banking Act 1982”.

THIRD SCHEDULE

Section 15

ENACTMENTS REPEALED

- 1908, No. 11—The Banking Act 1908. (R.S. Vol. 1, p. 268.)
- 1935, No. 23—The Banking Amendment Act 1935. (R.S. Vol. 1, p. 277.)
- 1946, No. 40—The Statutes Amendment Act 1946: Sections 7 to 10. (R.S. Vol. 1, p. 279.)
- 1953, No. 115—The Finance Act (No. 2) 1953: Sections 22 and 23. (R.S. Vol. 1, p. 281.)
- 1964, No. 134—The Reserve Bank of New Zealand Act 1964: So much of the Fourth Schedule as relates to the Banking Act 1908 and the Banking Amendment Act 1935. (Reprinted 1974, Vol. 3, p. 2439.)
- 1976, No. 33—The Waitangi Day Act 1976: Section 7 (5), (6).

This Act is administered in the Reserve Bank of New Zealand.