

PRIVATE SAVINGS BANKS BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the Private Savings Banks Act 1964. The restriction on trading banks carrying on savings banks other than by means of a savings bank company (which restriction is contained in section 6 of the existing Act) is not re-enacted.

Clause 1 relates to the Short Title.

Clause 2 defines terms used in the Bill.

Clause 3, which re-enacts section 3 of the Private Savings Banks Act 1964, authorises trading banks and subsidiaries of trading banks to hold shares in a savings bank company.

Clause 4 re-enacts subsections (1) to (3) of section 4 of the existing Act.

Subclause (1) authorises savings bank companies to establish and carry on private savings banks.

Subclause (2) provides that, except with the consent of the Minister of Finance, a savings bank company may not establish or carry on a savings bank outside New Zealand.

Subclause (3) provides that, except as otherwise provided by the Act or regulations under the Act, no savings bank company shall carry on any business other than that of a private savings bank.

Clause 5, which relates to the requirement that private savings bank companies be controlled by (i.e., be subsidiaries of) their parent banks, re-enacts section 8 of the existing Act without amendment.

Clause 6, which relates to the commencement of business of a savings bank company, re-enacts section 9 of the existing Act without amendment.

Clause 7 relates to the functions of private savings banks. It provides that the functions of private savings banks shall be to carry on the business of banking in such forms as may be authorised by the Governor-General by Order in Council and to carry out such other functions related to banking as may be so authorised.

Clause 8, which relates to the powers of savings bank companies, re-enacts section 4 (5) of the existing Act.

Clause 9 provides that, subject to regulations made under the Act, deposits in a private savings bank shall be made on such terms and conditions as the savings bank company determines.

Clause 10 provides that interest may be paid on deposits (subject to any Order in Council or regulations) on such terms and conditions as the savings bank company determines. Section 13 of the existing Act relates to the payment of interest and, in addition to making it obligatory for interest to be paid on deposits, imposes a number of requirements regarding calculation and payment of interest. The obligation to pay interest is removed under this clause and the conditions regarding its calculation and payment are now matters to be determined by the savings bank company subject to applicable regulations.

Clause 11 relates to the power of a savings bank company to borrow. Section 16 of the existing Act provides that a savings bank company may only borrow with the consent of the Minister of Finance and only such amounts and on such terms as are approved by him. The new clause authorises a savings bank company to borrow from any source on terms which it may itself decide without having to obtain ministerial approval.

Clause 12 relates to the investment powers of savings bank companies. Section 17 of the existing Act provides that private savings bank companies may invest only in certain specified investments (e.g., in New Zealand Government securities, mortgages of estates or interests in land, local authority securities, or in such manner as may be prescribed by regulations). That section also provides that the aggregate of all funds in hand (including funds required to be kept available), on current account with the parent bank, and the nominal value of investments, shall not be less than the amount of deposits.

The new clause authorises a savings bank company to invest money in such manner and on such terms and conditions as it may determine subject to the requirements of the Act and to section 34C of the Reserve Bank of New Zealand Act 1964 (which relates to the requirements of financial institutions to hold Reserve Bank or trading bank deposits, Government and local authority securities, or other specified assets). It is also provided that all investments must be made in New Zealand. The requirement as regards the aggregate amount of available funds and investments is removed.

Clause 13 relates to the guarantee of depositors funds and re-enacts section 11 of the existing Act with minor amendment.

Clause 14, which relates to directions by the Minister of Finance, re-enacts section 5 of the existing Act with minor amendment.

Clause 15, which relates to savings bank companies ceasing to carry on business, re-enacts section 12 of the existing Act with minor amendment.

Clause 16 relates to financial statements and re-enacts section 19(1) of the existing Act. Section 19 of the existing Act contains additional requirements regarding preparation, auditing, and publication of annual accounts. These have not been re-enacted although it is made clear in *subclause (2)* that the requirement to keep proper accounts of money received and disbursed, assets and liabilities and profits and losses, is in addition to the requirements of the Companies Act 1955 and any other Act.

Clause 17 re-enacts, with minor amendment, section 21(2) of the existing Act. The clause provides that where any provision of any enactment authorises the investment of money on deposit in a trustee bank, that provision shall be deemed to include authority to invest money on deposit in a private savings bank or a savings bank carried on by a trading bank.

Clause 18 relates to offences. This clause re-enacts section 22 of the existing Act with minor amendments and increases the fines that may be imposed.

Clause 19, which in general terms provides that a breach of the Act or any regulations shall not prejudice the interests of depositors, re-enacts section 23 of the existing Act without amendment.

Clause 20, which relates to the effect of certain other enactments, re-enacts section 24 of the existing Act with minor amendment.

Clause 21 authorises the making of regulations.

Clause 22: Subclause (1) repeals the Private Savings Bank Act 1964 and its amendments.

Subclause (2) is a savings provision.



Right Hon. Mr Muldoon

PRIVATE SAVINGS BANKS

ANALYSIS

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A BILL INTITULED

An Act to consolidate and amend the law relating to private savings banks

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

1. Short Title—This Act may be cited as the Private Savings Banks Act 1983.

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

“Financial year”, in relation to a savings bank company, means the financial year determined in that behalf by the company:

“Minister” means the Minister of Finance:

15 “Parent bank”, in relation to a savings bank company, means the bank having control of that company:

“Private savings bank” means a savings bank carried on by a savings bank company:

“Savings bank company” means a private company within the meaning of the Companies Act 1955, which, under the control of a bank in accordance with **section 5** of this Act, has for its principal object the carrying on in New Zealand of a savings bank: 5

“Subsidiary” means a subsidiary within the meaning of the Companies Act 1955:

“Trading bank” or “bank” means a bank referred to in the First Schedule to the Reserve Bank of New Zealand Act 1964: 10

“Trustee bank” means a trustee bank established under the Trustee Banks Act **1983**.

Cf. 1964, No. 9, s. 2 15

3. Banks may acquire shares in savings bank company—

(1) Notwithstanding the provisions of any enactment, contract, charter, memorandum or articles of association, or rule of law, but subject to **subsection (2)** of this section, any trading bank and any subsidiary of a trading bank may subscribe for and hold shares in a savings bank company. 20

(2) A trading bank or any subsidiary of that bank shall not at any time hold shares in more than one savings bank company to which this Act applies.

Cf. 1964, No. 9, s. 3 25

4. Savings bank company may carry on private savings bank—(1) Subject to the provisions of this Act, any savings bank company may establish and carry on in New Zealand a savings bank and for that purpose may establish branch offices and agencies. 30

(2) Except with the consent of the Minister, no savings bank company shall establish or carry on a savings bank elsewhere than in New Zealand.

(3) Except as otherwise provided by this Act or regulations under this Act, no savings bank company shall carry on any business other than that of a savings bank. 35

Cf. 1964, No. 9, s. 4 (1)-(3)

5. Savings bank company to be controlled by bank—

(1) No savings bank company shall commence or continue to carry on business unless effective control of the company is vested in its parent bank. 40

(2) For the purposes of this section, effective control of a savings bank company shall be deemed to be vested in its parent bank if, but only if, the savings bank company is a subsidiary of its parent bank.

5 Cf. 1964, No. 9, s.8

6. Commencement of business—No savings bank company shall commence to carry on a savings bank until authorised in that behalf by the Governor-General by Order in Council.

10 Cf. 1964, No. 9, s. 9

7. Functions—The functions of a private savings bank shall be—

(a) To carry on the business of banking in such forms as may be authorised from time to time by the Governor-General by Order in Council:

15 (b) To carry out such other functions related to the business of banking as may be authorised from time to time by the Governor-General by Order in Council.

Cf. 1964, No. 9, s. 4 (4)

20 **8. Powers**—Every savings bank company shall have all such powers as are conferred on it under this Act and all such other powers, not inconsistent with this Act, as are reasonably necessary for or incidental to the effective performance of the functions of the savings bank which it carries on.

25 Cf. 1964, No. 9, s. 4 (5)

9. Deposits—Subject to regulations made under this Act, deposits in a private savings bank shall be made on such terms and conditions as the savings bank company may from time to time determine.

30 **10. Interest on deposits**—Subject to any Order in Council or regulations made under this or any other Act, a savings bank company may pay interest on money deposited at such rate and on such terms and conditions as the savings bank company may from time to time determine.

35 **11. Power to borrow**—Every savings bank company may from time to time borrow from any person such amounts, upon such terms and conditions as it may determine.

12. Power to invest money—(1) Subject to this Act and to section 34C of the Reserve Bank of New Zealand Act 1964, any savings bank company may invest any money deposited in its savings bank or belonging to the company in such manner and upon such terms and conditions as may from time to time be determined by the company. 5

(2) All money invested by a savings bank company shall be invested in New Zealand.

13. Guarantee to depositors—(1) If the money for the time being available to any savings bank company is not sufficient to meet the claims of depositors in the savings bank carried on by the company for payment of money standing to their credit, the parent bank of the company shall pay to the company such sums as may be necessary to meet the deficiency. 15

(2) Every trading bank and every savings bank company controlled by that bank shall execute an instrument of guarantee, in a form approved by the Minister, under which the trading bank guarantees the payment to the savings bank company of any amount required to be paid under **subsection (1)** of this section. 20

(3) Every instrument executed under **subsection (2)** of this section shall be deposited with the Registrar of Companies.

Cf. 1964, No. 9, s. 11

14. Directions by Minister—(1) If in the opinion of the Minister the business of a savings bank company is being conducted in such a way as to be prejudicial to the safety of the funds of the depositors in its savings bank or as to be contrary to the policy of the Government of New Zealand in respect of savings institutions, the Minister may give, in writing, such directions for the conduct of the company's business as he thinks fit, and the company shall be bound to act in accordance with those directions. 25 30

(2) Nothing in this section shall—

- (a) Authorise the Minister to give directions with respect to an advance made or proposed to be made to a particular person; or 35
- (b) Affect the validity of a transaction entered into in relation to an advance or affect the right of a savings bank company to recover an advance or enforce the security given in respect of an advance. 40

Cf. 1964, No. 9, s. 5 (1), (4) (a), (b)

15. Savings bank company ceasing business—(1) If any savings bank company intends to cease to carry on a savings bank, it shall forthwith give notice of the fact to the Minister.

(2) No savings bank company shall cease to carry on a savings bank less than 6 months after having given notice of its intention to do so under **subsection (1)** of this section and unless all money owing to depositors in the savings bank has been paid to the depositors.

(3) If any savings bank company—

10 (a) Ceases to carry on business without having given notice of intention to do so under **subsection (1)** of this section; or

(b) Acts in contravention of or fails to comply with **subsection (2)** of this section,—

15 it and its parent bank each commit an offence and the company and its parent bank shall each be liable on summary conviction to a fine not exceeding \$50,000.

(4) Where a savings bank company ceases to carry on a private savings bank contrary to the provisions of **subsection (2)** of this section, any amount due to any depositor in the savings bank shall constitute a debt owing to the depositor by the parent bank of the company, and shall be recoverable accordingly in any Court of competent jurisdiction.

Cf. 1964, No. 9, s. 12

25 **16. Financial statements**—(1) Every savings bank company shall cause full and accurate accounts to be kept of all money received and disbursed, and of all assets and liabilities, and of all profits and losses in respect of the operations of the company.

30 (2) Nothing in **subsection (1)** of this section shall derogate from any provision of the Companies Act 1955 or any other enactment.

Cf. 1964, No. 9, s. 19 (1)

35 **17. Authority for certain deposits**—Where any provision of any enactment authorises the investment of money on deposit in a trustee bank, that provision shall be deemed to include authority to invest money on deposit in a private savings bank or a savings bank carried on by a trading bank.

Cf. 1964, No. 9, s. 21 (2)

40 **18. Offences**—Any savings bank company which carries on a savings bank contrary to the provisions of this Act, or which

wilfully fails to comply with any direction of the Minister under and in accordance with this Act, commits an offence and shall be liable on summary conviction to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day during which the offence has continued. 5

Cf. 1964, No. 9, s. 22

19. Contravention of Act by company not to prejudice rights of depositors—A contravention of or non-compliance with any provision of this Act, or of any regulation made or condition imposed thereunder, by a savings bank company shall not prejudice any contract or obligation for repayment to a depositor of any money deposited by him with the savings bank of the company or for the payment of interest lawfully payable thereon. 10 15

Cf. 1964, No. 9, s. 23

20. Other legislation—(1) Subject to the provisions of this Act, no savings bank company and no private savings bank shall be deemed to be a bank within the meaning of the Banking Act 1982. 20

(2) Nothing in sections 31 (2) (c) and 458 (2) of the Companies Act 1955 shall apply to a savings bank company.

(3) The provisions of sections 5 to 9 of the Banking Act 1982 shall apply with respect to private savings banks.

(4) Subject to the provisions of this Act, and of regulations under this Act, the provisions of the Bills of Exchange Act 1908 shall apply to savings bank companies in all respects as if those companies were bankers. 25

Cf. 1964, No. 9, s. 24

21. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 30

- (a) Regulating the keeping of accounts of depositors in private savings banks:
- (b) Regulating the mode of making deposits and withdrawing money: 35
- (c) Regulating accounts in private savings banks, including prescribing classes of accounts which may be opened and operated in private savings banks, and the conditions relating thereto: 40

- (d) Applying, with the necessary modifications, the provisions of section 129 of the Post Office Act 1959 to Home Lay-by Accounts opened in private savings banks:
- 5 (e) Providing for the payment of amounts standing to the credit of a depositor at his death to persons nominated in that behalf by the depositor and prescribing conditions relating to any such payment or nomination:
- 10 (f) Prohibiting, restricting, or controlling the automatic transfer of money from an account of any person in a private savings bank to an account of the same person in the parent bank of that savings bank:
- 15 (g) Prescribing and regulating rates of interest on deposits and the manner in which interest is calculated and paid:
- (h) Prescribing amounts to be kept by savings bank companies in cash, or on current account, or in other investments immediately available:
- 20 (i) Prescribing the returns to be made by savings bank companies:
- (j) Prescribing the persons or classes of persons who may be depositors in private savings banks:
- 25 (k) Prescribing limits in respect of deposits by savings bank companies with their parent banks or other trading banks and regulating the disposition of cash reserves of savings bank companies:
- 30 (l) Applying to savings banks carried on by trading banks (other than by means of a savings bank company) any regulation made under any other paragraph of this subsection in respect of Home Lay-By Accounts or any account in a private savings bank established under the Farm Ownership Savings Act 1974, the Fishing Vessel Ownership Savings Act 1977, or the Home Ownership Savings Act 1974.
- 35 (m) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.
- 40 (2) Nothing in **subsection (1) (l)** of this section limits any provision of the Reserve Bank of New Zealand Act 1964 or any power to give directions or to make regulations which is conferred by any such provision.

Cf. 1964, No. 9, s. 25

22. Repeals and saving—(1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) The repeal of the Private Savings Banks Act 1964 by **subsection (1)** of this section shall not affect the amendment made by section 21 (1) of that Act to section 2 (1) of the Trustee Act 1956. 5

(3) Nothing in this Act prevents a trading bank from carrying on a savings bank other than by means of a savings bank company.

SCHEDULE

Section 22 (1)

ENACTMENTS REPEALED

- 1964, No. 9—The Private Savings Banks Act 1964.
 1970, No. 18—The Private Savings Banks Amendment Act 1970.
 1972, No. 122—The Private Savings Banks Amendment Act 1972.
 1973, No. 16—The Reserve Bank of New Zealand Amendment Act 1973:
 Section 14 (4) and so much of the Schedule to that Act
 as relates to the Private Savings Banks Act 1964.
 (Reprinted 1974, Vol. 3, p. 2485.)
 1977, No. 24—The Private Savings Banks Amendment Act 1977.
 1978, No. 103—The Securities Act 1978: Section 71 (13).
 1978, No. 118—The Private Savings Banks Amendment Act 1978.