



ANNO VICESIMO SEXTO

GEORGII V REGIS.

A.D. 1935.

No. 2223.

An Act to consolidate certain Acts relating to banks and bank notes.

[Assented to, 28th November, 1935.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Banking Companies Act, 1935". Short title.

2. The Acts mentioned in the first schedule to this Act are repealed. Repeal.

3. This Act is divided into two Parts as follows :— Division of Act.

PART I.—Duties of banks as to periodical returns, charters, letters patent, and other matters.

PART II.—Bank notes security.

PART I.

PART I.

DUTIES OF BANKS AS TO PERIODICAL RETURNS, CHARTERS, LETTERS PATENT AND OTHER MATTERS.

4. In this Part—

"bank" means any company, firm, or individual publicly engaged in the ordinary business of banking by

Interpretation.
25, 1863, s. 11.
5, 1875, s. 1

receiving deposits and issuing bills or notes payable to the bearer, at sight or on demand.

“quarter” means period of three months ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, or the thirty-first day of December.

Statement of weekly average liabilities and assets.
25, 1863, s. 1.

5. Every bank shall, at the close of business on Monday of every week, prepare a full and correct account and statement in writing showing the assets, property, and credits belonging to the bank, and its debts, engagements, and liabilities.

Quarterly statements.
25, 1863, s. 2.
5, 1875, s. 1.

6. (1) From the weekly accounts and statements prepared under the preceding section every bank shall prepare on the last Monday of every quarter—

- (a) a general abstract in writing of the average amount during that quarter of its assets, property, and credits, and its debts, engagements, and liabilities in the form set forth in the second schedule to this Act ;
- (b) a statement showing the amount of the capital stock of the bank paid up at the close of the quarter to which the abstracts relate ;
- (c) the rate and amount of the last dividend declared to the shareholders or proprietors ; and
- (d) the amount of the reserved profit at the time of declaring such dividend.

(2) Every abstract and statement prepared under this section shall be verified by the oath of the manager, accountant, or clerk of the bank, and shall, within one calendar month after the close of the quarter to which it relates, or as soon thereafter as may be practicable, be delivered to the Chief Secretary to be laid before Parliament and published in the *Gazette*.

Penalty for failure to keep or make returns.
25, 1863, s. 3.

7. If—

- (a) any bank neglects to keep any weekly account required by this Act to be kept, or to prepare, return, or deliver to the Chief Secretary any abstract required by this Act to be so prepared, returned, or delivered ; or
- (b) any manager, accountant, or clerk verifying any abstract delivers or returns to the Chief Secretary any false abstract,

it or he shall forfeit for such offence the sum of five hundred pounds, to be recovered by action of debt in the Supreme Court or any other court of competent jurisdiction by any person who sues for it.

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8. (1) The manager, accountant, or clerk of every bank shall—

(a) as soon as practicable after the establishment of the bank register and deposit in the office of the Registrar of Companies a copy of the charter, letters patent, or deed of co-partnership and settlement of the bank :

(b) as soon as practicable after any new charter, letters patent, or deed of co-partnership and settlement is issued to or entered into by any bank or any alteration or addition is made to any such charter, letters patent, or deed of co-partnership and settlement, register and deposit at the office of the Registrar of Companies a copy of the charter, letters patent, or deed of co-partnership and settlement or of the alteration thereof or addition thereto.

(2) Every document so deposited and registered shall be attested by the manager, accountant, or clerk for the time being of the bank to be a true transcript of the original charter, letters patent, deed of co-partnership and settlement, or alteration thereof or addition thereto.

(3) Every document deposited under this section shall be open for inspection at all reasonable times by any person requiring to inspect it, on payment of a fee of one shilling for each inspection.

(4) If any manager, accountant, or clerk omits or neglects to deposit and register any document required by this section to be deposited and registered, he shall be liable to a penalty of one hundred pounds, to be recovered by action of debt in the Supreme Court or any other court of competent jurisdiction by any person who sues for it.

9. (1) The manager, accountant, or clerk of every bank shall, within thirty days after the first of July in every year or as soon thereafter as is practicable, cause a true and correct list of the names, places of abode, and descriptions of all the then existing proprietors or members of the bank so far as known to him to be recorded on oath in the office of the Registrar of Companies.

(2) The list shall be open for inspection at all reasonable times by any person on payment of a fee of one shilling for each inspection.

(3) If any manager, accountant, or clerk omits or neglects to cause a list to be recorded in accordance with this section or wilfully falsifies any list under this section he shall be liable

Duty to deposit charter, letters patent or deed of settlement.

25, 1863, ss. 4, 5.
1632, 1924, s. 4 (Sched.).

Record of proprietors.
25, 1863, s. 6.
1386, 1919, s. 3.
1632, 1924, s. 4 (Sched.).

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to a penalty of one hundred pounds to be recovered by action of debt in the Supreme Court or any other court of competent jurisdiction by any person who sues for it.

(4) This section shall not apply to any banking company which is incorporated as a company with limited liability and whose capital is divided into shares.

Liability of
proprietors of
banks.
25, 1863, s. 7.

10. Every person whose name is recorded under the last section shall be held to be a proprietor or member of the bank of which he is named as a proprietor or member and shall be liable to be sued as such until a new list of the names of the proprietors or members of the bank is recorded under this Part: Provided that nothing in this Part shall—

- (a) absolve any person from liability on account of any debts incurred by any bank during the time he remained a proprietor or member thereof; or
- (b) render any proprietor or member of any bank, established by Royal Charter, letters patent, or under any Act relating to joint stock companies or by any Act of Parliament of Great Britain or of the State, liable for any debts incurred by the bank, except so far as he is liable under the charter, letters patent, or Act of Parliament.

Oaths and
perjury.
25, 1863, s. 8.

11. (1) Every oath required to be taken under this Part may be taken before any justice of the peace; and any justice of the peace is hereby authorised to administer any such oath.

(2) Any manager, accountant, or clerk who takes any false oath as to any quarterly abstract of averages or other matter or thing under this Part shall be guilty of perjury and punishable accordingly.

Limitation of
actions.
25, 1863, s. 9.

12. No action shall lie against any person for any offence committed against this Part, unless the action is commenced within two years from the time when the offence is alleged to have been committed.

Onus of
proof.
25, 1863, s. 10.

13. If any matter or thing required to be done or performed under this Part within any given period is not so done or performed, the proof that it was not practicable to do so shall lie upon the party required to do or perform it: Provided that no excuse shall be allowed for any such failure or neglect, unless it is shown that the matter or thing required to be done or performed was done or performed as soon as practicable.

Publication in
Gazette.
25, 1863, s. 12.

14. Any matter required by this Part to be inserted in the *Gazette*, shall be so inserted free of charge.

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PART II.

PART II.

BANK NOTES SECURITY.

15. In this Part, unless the context otherwise requires—

Interpretation.
468, 1889, s. 2.

“bank” means any bank or body corporate carrying on the business of banking in the State, either alone or jointly with any other business :

“bank note” or “note” means any note issued by a bank and payable on demand in the State :

“general assets” means the funds available in the State for payment of the general creditors, as well as the noteholders of any bank.

16. When any bank is being wound up, the payment of all notes issued by the bank shall be a first charge upon the general assets of the bank.

Notes to be a first charge on assets.
468, 1889, s. 3

17. (1) If any bank or any firm or individual carrying on banking, or any person on behalf of any such bank, firm, or individual, otherwise than in the ordinary course of business issues or deals with or authorises or causes to be issued and dealt with any notes of such bank, firm, or individual which if issued and dealt with in the ordinary course of business would have priority under this Part, with the object of—

Penalty on fraudulent issue of notes.
468, 1889, s. 4.

(a) giving any priority in the event of the bank being wound up or the firm or individual being insolvent or bankrupt ; or

(b) securing any debt or liability incurred or to be incurred by such bank, firm, or individual,

every person issuing or dealing with such notes or authorising or causing them to be issued or dealt with, shall be guilty of a misdemeanour and liable to imprisonment for not more than two years.

(2) Any notes so issued and dealt with not being in the hands of a *bona fide* holder for value without notice that the same were so issued and dealt with, shall be void.

18. If any bank publishes by advertisement any statement of the amount of its capital—

Penalty for misleading advertisements of capital.
468, 1889, s. 5.

(a) which is misleading ; or

(b) in which the amount of nominal or authorised capital is stated without the words “nominal” or “authorised” or words to the like effect, so as to show that the amount of capital stated is only nominal or authorised ; or

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(c) in which the amount of nominal or authorised or subscribed capital is stated but the amount of the paid up capital is not stated,

the bank shall be guilty of an offence and liable to a penalty of not more than five hundred pounds, to be recoverable, with full costs of suit, by any person who sues for it.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

W. DUGAN, Governor.

SCHEDULES.

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SCHEDULES.

THE FIRST SCHEDULE.

SCHEDULE OF ACTS REPEALED.

Number and Year of Act.	Title of Act.
No. 25 of 1863	The Banking Companies Act.
No. 5 of 1875	The Banking Companies Amendment Act, 1875.
No. 1386 of 1919	Banking Companies Act Further Amendment Act, 1919.
No. 468 of 1889	The Bank Notes Security Act, 1889.

THE SECOND SCHEDULE.

General Abstract, showing the average amount of the Liabilities and Assets of the Bank of _____, taken from the several weekly statements during the quarter, from the _____ to the _____ 19 _____.

Liabilities.	Amount.	Totals.	Assets.	Amount.	Totals.
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
Notes in circulation { Not bearing interest			Coined gold and silver and other coined metals ...		
{ Bearing interest.....					
Bills in circulation { Not bearing interest			Gold and silver in bullion or bars		
{ Bearing interest.....			Government securities		
Balances due to other banks			Landed property		
Deposits			Notes and bills of other banks		
{ Not bearing interest			Balances due from other banks		
{ Bearing interest.....			Amount of all debts due to the bank, including notes, bills of exchange, and all stock and funded debts of every description, excepting notes, bills, and balances due to the said bank from other banks		
Total amount of liabilities	£		Total amount of assets		
Amount of the capital stock paid up at the close of the quarter ended _____, 19					
Rate of the last dividend declared to the shareholders					
Amount of the last dividend declared					
Amount of the reserved profits at the time of declaring such dividend					

Place and date. _____ Manager.
 _____ Accountant.
 I, A.B., make oath, that to the best of my knowledge and belief, the foregoing abstract is a true and faithful account of the average amount of assets and liabilities of the above bank during the period specified; and that the same was made up from the weekly statements thereof, kept in pursuance of the provisions of the Banking Companies Act, 1935.
 Sworn before me, at _____, this _____ day _____, 19 _____ (Signed) _____ A.B.
 C.D., Justice of the Peace.

Adelaide: By authority, FRANK TRICE, Government Printer, North Terrace.