

Banks (Shareholdings)

No. 2 of 1972

An Act relating to Shareholdings in certain Banks.

[Assented to 7 March 1972]

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

PART I.—PRELIMINARY.

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| Short title. | 1. This Act may be cited as the <i>Banks (Shareholdings) Act 1972</i> . |
| Commence-
ment. | 2. This Act shall come into operation on a date to be fixed by Proclamation. |
| Parts. | 3. This Act is divided into Parts, as follows:—
Part I.—Preliminary (Sections 1—9).
Part II.—Limitation of Shareholdings in Banks (Sections 10—13).
Part III.—Miscellaneous (Sections 14—17). |
| Persons obliged
to comply
with this Act. | 4. The obligation to comply with this Act extends to all natural persons, whether resident in Australia or not and whether Australian citizens or not, and to all bodies corporate, whether incorporated or carrying on business in Australia or not. |
| Extra-
territorial
operation. | 5. This Act extends to acts done or omitted to be done outside Australia. |

6.—(1.) In this Act, unless the contrary intention appears—

Interpretation.

“bank” means a body corporate, being a body corporate incorporated in a State or Territory of the Commonwealth or in a Colony that became a State, in respect of which there is in force for the time being an authority referred to in section 9 of the *Banking Act 1959–1967*;

“corporation” includes an association, a partnership or other organization, whether incorporated or not;

“person” includes a corporation;

“voting share”, in relation to a bank, means an issued share in the capital of that bank, not being—

(a) a share to which, in no circumstances, is there attached a right to vote; or

(b) a share to which there is attached a right to vote only in one or more of the following circumstances:—

(i) during a period during which a dividend (or part of a dividend) in respect of the share is in arrear;

(ii) upon a proposal to reduce the share capital of the bank;

(iii) upon a proposal that affects rights attached to the share;

(iv) upon a proposal to wind up the bank;

(v) upon a proposal for the disposal of the whole of the property, business and undertaking of the bank;

(vi) during the winding up of the bank.

(2.) In this Act—

(a) a reference to a share of a bank shall be read as a reference to a share in the capital of the bank; and

(b) a reference to a share of a bank shall be read as including a reference to stock into which a share in the capital of the bank has been converted.

7. Where the whole or a part of the share capital of a bank consists of stock, an interest of a person in any such stock shall be deemed to be, for the purposes of this Act, an interest in an issued share of that bank having the same nominal amount as the amount of that stock and having attached to it the same rights as are attached to that stock.

Stock deemed to be shares.

8.—(1.) The following sub-sections of this section have effect for the purposes of this Act.

Interests in shares.

(2.) Where the property subject to a trust consists of or includes shares and a person knows or has reasonable grounds for believing—

(a) that he has an interest under the trust; and

(b) that the property subject to the trust consists of or includes those shares,

he shall be deemed to have an interest in those shares.

(3.) Where—

- (a) a right, being a right or an interest described in the definition of “interest” in section 76 of the *Companies Ordinance* 1962–1969 of the Australian Capital Territory or in the definition of that word in the corresponding provision of the law of a State or of another Territory of the Commonwealth, was issued or offered to the public for subscription or purchase;
- (b) the public was invited to subscribe for or purchase such a right and the right was so subscribed for or purchased; or
- (c) such a right was issued for the purposes of an offer to the public by, and is held by, the management company within the meaning of that section or corresponding provision,

that right does not constitute an interest in a share.

(4.) Where a body corporate has an interest in a share and—

- (a) the body corporate is, or its directors are, accustomed, or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to that share;
- (b) a person has a controlling interest in the body corporate; or
- (c) a person is, the associates of a person are, or a person and his associates are, entitled to exercise or control the exercise of not less than three-twentieths of the votes attached to the voting shares in the body corporate,

that person shall be deemed to have an interest in that share.

(5.) For the purposes of paragraph (c) of the last preceding sub-section, a person is an associate of another person—

- (a) if the first-mentioned person is—
 - (i) a corporation that, by virtue of sub-section (5.) of section 6 of the *Companies Ordinance* 1962–1969 of the Australian Capital Territory or of the corresponding provisions of the law of a State or of another Territory of the Commonwealth, is to be deemed to be related to that other person;
 - (ii) a person in accordance with whose directions, instructions or wishes that other person is accustomed, or under an obligation, whether formal or informal, to act in relation to the share referred to in the last preceding sub-section;
 - (iii) a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that share;
 - (iv) a body corporate that is, or the directors of which are, accustomed, or under an obligation, whether formal or

informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that share; or

- (v) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed, or under an obligation, whether formal or informal, to act in relation to that share; or

(b) if—

- (i) the first-mentioned person is a corporation and that other person is an officer of that corporation;
- (ii) the first-mentioned person is a partner of that other person; or
- (iii) the first-mentioned person and that other person are members of a voting trust and the trust relates to shares of the bank concerned.

(6.) Where a person—

- (a) has entered into a contract to purchase a share;
- (b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
- (d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder,

that person shall be deemed to have an interest in that share.

(7.) A person shall not be deemed not to have an interest in a share by reason only that he has the interest in the share jointly with another person.

(8.) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

(9.) There shall be disregarded—

- (a) an interest in a share if the interest is that of a person who holds the share as bare trustee;
- (b) an interest in a share of a person whose ordinary business includes the lending of money if he has the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connexion with the lending of money;

- (c) an interest of a person in a share that is an interest that he has by reason of his holding a prescribed office; and
 - (d) a prescribed interest in a share that is an interest of such person, or of the persons included in such class of persons, as is prescribed.
- (10.) An interest in a share shall not be disregarded by reason only of—
- (a) its remoteness;
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

**Associated
shareholders.**

9.—(1.) The following sub-sections of this section have effect for the purposes of this Act.

(2.) Where a person is to be deemed to be an associate of another person, as provided by the next two succeeding sub-sections, the first-mentioned person shall be deemed to have an interest in the shares in which that other person has an interest.

(3.) For the purposes of the last preceding sub-section, a person shall be deemed to be an associate of another person if—

- (a) the first-mentioned person is a corporation and that other person is an officer of that corporation;
- (b) the first-mentioned person is a partner of that other person;
- (c) the first-mentioned person is a corporation and that other person, whether a corporation or not, is in a position to control that corporation;
- (d) the first-mentioned person is a corporation and that other person is also a corporation and a person, whether a corporation or not, is in a position to control each of those corporations; or
- (e) the first-mentioned person and that other person are members of a voting trust and the trust relates to shares of the bank concerned.

(4.) Where, by reason of the last preceding sub-section, a person is to be deemed to be an associate of another person, that other person shall, for the purposes of sub-section (2.) of this section, be deemed to be an associate of the first-mentioned person.

PART II.—LIMITATION OF SHAREHOLDINGS IN BANKS.

**Limitation of
shareholdings
in banks.**

10.—(1.) Subject to the next two succeeding sub-sections, a person shall not have an interest in one or more voting shares of a bank if the nominal amount of that share or the aggregate of the nominal amounts of those shares is not less than ten per centum of the aggregate of the nominal amounts of all the voting shares of the bank.

Penalty: Two hundred dollars for each day during which the contravention continues.

(2.) Where, under the next succeeding section, a percentage is applicable in relation to a person, that person shall not have an interest in one or more voting shares of the bank concerned if the nominal amount of that share or the aggregate of the nominal amounts of those shares is greater than that percentage of the aggregate of the nominal amounts of all the voting shares of that bank.

Penalty: Two hundred dollars for each day during which the contravention continues.

(3.) Where a percentage is specified in an instrument under the succeeding provisions of this section applicable in relation to a person, that person shall not have an interest in one or more voting shares of the bank concerned if the nominal amount of that share or the aggregate of the nominal amounts of those shares is greater than that percentage of the aggregate of the nominal amounts of all the voting shares of that bank.

Penalty: Two hundred dollars for each day during which the contravention continues.

(4.) The Governor-General may, after application made to the Treasurer by a person, by instrument in writing published in the *Gazette*, fix, for the purposes of this section in its application to that person, a percentage not less than ten.

(5.) The Governor-General may, from time to time, of his own motion or after application made to the Treasurer by the person concerned, by instrument in writing published in the *Gazette*, vary an instrument referred to in the last preceding sub-section but so that the percentage fixed by the instrument as varied shall not be less than ten.

(6.) An application under either of the last two preceding sub-sections shall be in writing and shall give particulars of the interest of the applicant in voting shares of the bank concerned.

(7.) The Governor-General may, by instrument in writing published in the *Gazette*, revoke an instrument under sub-section (4.) or (5.) of this section as from a date specified in the instrument, not being a date earlier than three months after the date on which the first-mentioned instrument is published in the *Gazette*.

(8.) An instrument varying an instrument under sub-section (5.) of this section so that the percentage fixed by the instrument as varied is less than the percentage so fixed before the variation has effect as from a date specified in the first-mentioned instrument, not being a date earlier than three months after the date on which that instrument is published in the *Gazette*.

(9.) A person shall not furnish to the Treasurer, in connexion with an application referred to in this section, information that, to the knowledge of the person, is false or misleading in a material particular.

Penalty: One thousand dollars.

Transitional
provisions.

11.—(1.) This section has effect in respect of a person who, as at the first day of May, One thousand nine hundred and seventy, had an interest in one or more voting shares of a bank and the nominal amount of that share, or the nominal amount of those shares, was, at that date, a percentage of the aggregate of the nominal amounts of all the voting shares of the bank (in this section referred to as “ the earlier percentage ”) not less than ten.

(2.) Subject to sub-sections (4.) and (5.) of this section, where a person referred to in the last preceding sub-section had, as at the date of commencement of this Act, an interest in one or more voting shares of the bank concerned and the nominal amount of that share, or the nominal amount of those shares, was, as at that date, a percentage of the aggregate of the nominal amounts of all the voting shares of that bank—

- (a) not less than ten but less than the earlier percentage—the percentage applicable in relation to that person for the purposes of the last preceding section is the percentage first mentioned in this sub-section; or
- (b) equal to or greater than the earlier percentage—the percentage applicable in relation to that person for the purposes of the last preceding section is the earlier percentage.

(3.) The last preceding sub-section ceases to have effect in relation to a person at the expiration of the period of three months after the commencement of this Act, or at the expiration of such further period as the Treasurer, by instrument in writing made during the first-mentioned period, allows in relation to that person, unless that person, before the expiration of that period or further period, as the case may be, has given to the Treasurer full particulars (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person registered as the holder of the shares) of the voting shares of the bank concerned in which he had an interest or interests as at the first day of May, One thousand nine hundred and seventy, and as at the date of commencement of this Act, including full particulars of each such interest and of the circumstances by reason of which he had that interest.

(4.) The Treasurer may, from time to time, of his own motion or on application by a person in respect of whom this section has effect, by instrument in writing published in the *Gazette*, fix, for the purposes of the application of the last preceding section in relation to that person, a percentage not being less than the percentage that the nominal amount of the voting share, or the aggregate of the nominal amounts of the voting shares, of the bank concerned in which that person had an interest as at the date of the instrument bears to the aggregate of the nominal amounts of all the voting shares of that bank.

(5.) The Treasurer, may, from time to time, of his own motion or on application by the person concerned, by instrument in writing published in the *Gazette*, vary an instrument referred to in the last preceding sub-section but so that the percentage fixed by the instrument as so varied is not less than the percentage that the nominal amount of the voting share, or the aggregate of the nominal amounts of the voting shares, of the bank concerned in which that person had an interest as at the date of the instrument of variation bears to the aggregate of the nominal amounts of all the voting shares of that bank.

(6.) The Treasurer shall not, by an instrument under either of the last two preceding sub-sections, fix a percentage less than ten.

(7.) An application under sub-section (4.) or (5.) of this section shall be in writing and shall give particulars of the interest of the applicant in voting shares of the bank concerned.

(8.) A person shall not furnish to the Treasurer, for the purposes of sub-section (3.) of this section or in connexion with an application referred to in this section, information that, to the knowledge of the person, is false or misleading in a material particular.

Penalty: One thousand dollars.

12.—(1.) Where a person (in this section referred to as “the substantial shareholder”) has failed to comply with sub-section (1.), (2.) or (3.) of section 10 of this Act, the Supreme Court of a State may, on the application of the Treasurer, whether or not that failure still continues, and whether or not other proceedings in respect of that failure have been instituted, make one or more of the following orders:—

Powers ~~confer~~
with respect to
defaulting
substantial
shareholders.

- (a) an order restraining the exercise of any voting or other rights attached to any share of the bank concerned in which the substantial shareholder has an interest;
- (b) an order directing the bank concerned not to make payment, or to defer making payment, of any sum due from the bank in respect of any share of that bank in which the substantial shareholder has an interest;
- (c) an order directing the sale of all or any of the shares of the bank concerned in which the substantial shareholder has an interest;
- (d) an order that any exercise of the voting or other rights attached to specified shares of the bank concerned in which the substantial shareholder has, or has had, an interest be disregarded;
- (e) for the purpose of securing compliance with any other order made under this section, an order directing the bank concerned or any other person to do or refrain from doing a specified act.

(2.) An order under this section may include such ancillary or consequential provisions as the court thinks just.

(3.) The court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(4.) The court shall not make an order under sub-section (1.) of this section, other than an order restraining the exercise of voting rights, if it is satisfied—

(a) that the failure of the substantial shareholder to comply as mentioned in sub-section (1.) of this section was due to his inadvertence or mistake or to his not being aware of a fact or occurrence the existence of which was necessary to constitute that failure; and

(b) that, in all the circumstances, the failure ought to be excused.

(5.) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(6.) A Supreme Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(7.) A person shall not contravene or fail to comply with an order under this section that is applicable to him.

Penalty: One thousand dollars.

(8.) The last preceding sub-section does not affect the powers of a Supreme Court in relation to the punishment of contempts of the court.

(9.) The Supreme Court of each State is invested with federal jurisdiction for the purposes of this section.

**Defence to
prosecutions.**

13.—(1.) It is a defence to a prosecution for an offence against sub-section (1.), (2.) or (3.) of section 10 of this Act if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence.

(2.) For the purposes of the last preceding sub-section, a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's interest or interests in a share or shares of the bank concerned, was aware at that time.

PART III.—MISCELLANEOUS.

14. A contract, instrument, dealing or transaction affecting shares of a bank is not unenforceable, voidable or void by reason only that, by reason of the contract, instrument, dealing or transaction having been entered into or having occurred, a person has committed a contravention of this Act.

Contracts, &c.,
not affected.

15.—(1.) Subject to the succeeding provisions of this section—

(a) the several courts of the States are invested with federal jurisdiction; and

(b) jurisdiction is conferred on the several courts of the Australian Capital Territory and of the Northern Territory of Australia,

with respect to offences against this Act.

Jurisdiction
of courts.

(2.) The jurisdiction invested in, or conferred on, courts by the last preceding sub-section is invested or conferred within the limits (other than limits having effect by reference to the places at which offences are committed) of their several jurisdictions, whether those limits are as to subject-matter or otherwise.

(3.) Jurisdiction is not conferred on a court of a Territory referred to in paragraph (b) of sub-section (1.) of this section unless the offence was committed in that Territory.

(4.) Subject to this section, the *Judiciary Act* 1903–1969 applies in relation to offences against this Act.

16. Proceedings for an offence against this Act shall not be instituted without the consent in writing of the Treasurer.

Treasurer's
consent
required for
proceedings.

17. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.