



CHAPTER xviii.

An Act to enable certain alterations to be made in the
Scheme of Arrangement of the affairs of the London
Bank of Australia Limited and for other purposes.

A.D. 1897.

[3rd June 1897.]

WHEREAS the London Chartered Bank of Australia (in this Act referred to as "the Old Bank") being a bank incorporated under Royal Charter suspended payment on the twenty-fifth day of April one thousand eight hundred and ninety-three:

And whereas the nominal capital of the Old Bank was one million pounds divided into fifty thousand shares of twenty pounds each the whole of which had been issued and paid up and under the terms of the charter every shareholder in the Old Bank was in the event of its going into liquidation liable for a further sum of twenty pounds per share:

And whereas at the date of the suspension of payments by the Old Bank the Old Bank owed about six million eight hundred and twenty thousand pounds of which about nine hundred and eighty thousand pounds was in respect of preferential and other claims herein-after specified and the balance was due upon terminable deposits and open accounts:

And whereas the preferential and other claims above referred to were approximately—

	£
(A) Amount due to the Government - -	448,100
(B) Amount due upon note issue - -	243,300
and (C) Bank drafts and acceptances current or due at date of suspension which to save the goodwill of the Company it was decided to class as preferential liabilities - -	288,600
Total - -	<u>980,000</u>

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And whereas on the suspension of the Old Bank a petition was presented for the winding up of its affairs under the Companies Acts 1862 to 1890 and on the seventeenth day of May one thousand eight hundred and ninety-three an order was made for the winding up of the Old Bank and the Official Receiver was appointed liquidator thereof :

And whereas the scheme of arrangement set forth in the schedule hereto herein-after called the old scheme was prepared under which a new bank was to be formed and a new bank was formed accordingly under the name of the London Bank of Australia Limited (in this Act referred to as "the Company") and was on the second day of August one thousand eight hundred and ninety-three duly registered under that name as a limited company under the Companies Acts 1862 to 1890 with a registered office situate in England and with a capital of four million pounds divided into sixty-two thousand five hundred ordinary shares of forty pounds each (of which fifteen pounds was to be credited as paid up) with the right to shareholders in the Old Bank to apply for shares in the Company share for share paying up twenty-five pounds per share (beyond the fifteen pounds credited as paid up thereon as aforesaid) in instalments as provided by the scheme of arrangement and one hundred and fifty thousand preference shares of ten pounds each which under the old scheme were issuable to any creditor of the Old Bank (other than the said creditors for nine hundred and eighty thousand pounds) applying for the same within a reasonable time as fully paid up in discharge of so much of the creditor's claim as should be equal to the nominal amount of his shares :

And whereas it was provided in the old scheme that the liquidator should make a call of twenty pounds per share on the shareholders in the Old Bank and apply the proceeds of the call in paying the preferential and other claims amounting to about nine hundred and eighty thousand pounds as aforesaid and that every shareholder in the Old Bank on applying for shares in the Company should be allotted ordinary shares therein equal in number to the shares in the Old Bank held by him in respect of which he should so apply of the nominal value of forty pounds each with fifteen pounds credited as paid up thereon on the terms that the liability thereon should be payable as to ten pounds in four instalments of two pounds ten shillings in the years one thousand eight hundred and ninety-three and one thousand eight hundred and ninety-four as to a further two pounds ten shillings after the first day of May one thousand eight hundred and ninety-five when in the judgment of the directors of the Company it might be expedient and as to the

balance of twelve pounds ten shillings that it should remain as a reserve liability pursuant to the Statute to that effect and the shareholder should be indemnified by the Company against the payment of any call made on the shares of the Old Bank in respect of which he should so apply and that the New Bank should assume and provide for all the liabilities of the Old Bank other than the said nine hundred and eighty thousand pounds claims above referred to and should purchase and take over the whole of the assets business and goodwill of the Old Bank other than the proceeds of the said twenty pounds call and other than the proceeds of any shares in the Company realised by the liquidator and that the Company should issue to any creditor of the Old Bank (other than creditors in respect of the said nine hundred and eighty thousand pounds) applying for the same fully-paid five and a half per cent. cumulative preference shares of a nominal amount equal to the amount of such creditor's claim and that any creditor applying for such shares should take them in discharge of so much of his claim as should be equal to the nominal amount of his shares and that these preference shares should subject as therein-after provided be cumulative as to dividend up to five and a half per cent. and preferential as to capital and after five per cent. should have been paid on the ordinary shares should be entitled to a moiety of any divisible surplus profits up to a total dividend of seven per cent. provided that when the Company should have paid to the preference shareholders five yearly dividends at the rate last named preference as to dividends should cease and that the Company should issue and the creditors should take in discharge of the liabilities of the Old Bank other than the said nine hundred and eighty thousand pounds of claims and other than its liabilities discharged by the issue of preference shares deposit receipts bearing interest at four and a half per cent. payable half-yearly the principal of which should be payable by instalments of one tenth on the first day of July in each of the years one thousand eight hundred and ninety-eight to one thousand nine hundred and seven with an option to the Company to pay off any of the instalments at an earlier date on giving six months notice and the interest should be payable on the first day of July and the first day of January in every year commencing with the first day of January one thousand eight hundred and ninety-four :

And whereas the old scheme was on the twenty-first day of July one thousand eight hundred and ninety-three sanctioned by the Court :

And whereas the Company issued in pursuance of the old scheme seventeen thousand one hundred and ninety-three five and a half

A.D. 1897. — per cent. cumulative preference shares to all creditors of the Old Bank applying for the same and issued in discharge of the liabilities of the Old Bank (other than the said nine hundred and eighty thousand pounds of claims and other than its liabilities discharged by the issue of preference shares and certain liabilities in respect of rates taxes wages and other similar claims which under the old scheme were payable and were in fact paid in cash) deposit receipts bearing interest at four and a half per cent. as provided by the said scheme :

And whereas in exercise of the option given to it by the old scheme the Company has paid three of the said instalments of principal of the said deposit receipts and there are at present outstanding deposit receipts for a total principal amount of three million three hundred and fifty thousand pounds and no more :

And whereas the Company carries on its business partly in England and partly in the Australian colonies and the sums of money from time to time payable under certain of the aforesaid deposit receipts are payable and have in fact been paid in the said colonies :

And whereas in consequence of the changed conditions of financial affairs and the fall in the value of money and in the rates of discount and of interest on banking advances and in consequence of the continued depression in Australia since the year one thousand eight hundred and ninety-three the earning power of the Company has been very seriously curtailed while the rate of interest payable by the Company half-yearly on its deposit receipts under the old scheme remains at the high rate of four and a half per cent. and it is expedient that the Company and the holders of the said deposit receipts should have the power with the approval of the Court to modify if they consider it in their interest to do so their respective rights and obligations as regards the rate of interest and the dates of repayment of the principal of the deposit receipts And whereas in the case of a company registered under the Companies Acts 1862 to 1890 no such modification can be made binding upon creditors or classes of creditors except when the Company is in course of being wound up and a winding-up would be very prejudicial to the goodwill and business of the Company and seriously impair its credit and position as a bank :

And whereas the objects of this Act cannot be attained without the authority of Parliament :

May it therefore please Your Majesty that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and

Commons in this present Parliament assembled and by the authority A.D. 1897.
of the same as follows :—

1. This Act may be cited as the London Bank of Australia Limited Act 1897. Short title.

2. It shall be lawful for the Court on the application in a summary way of the Company or of a holder of any of the deposit receipts issued under the old scheme to order that a meeting of the holders of such deposit receipts shall be summoned and held in such manner as the Court shall direct for the purpose of considering and if thought fit of agreeing to with or without modifications any compromise or arrangement between the holders of such deposit receipts and the Company which shall be proposed as if the Company were then being wound up voluntarily under the Companies Acts 1862 and 1867 and if a majority in number representing three fourths in value of the holders of such deposit receipts present either in person or by proxy or attorney at such meeting shall agree to any compromise or arrangement either without modification or with such modifications as the holders of such deposit receipts shall agree to with the consent of the Company such compromise or arrangement with such modifications (if any) shall if sanctioned by an order of the Court be binding on all the holders of such deposit receipts whether such deposit receipts or the moneys payable thereunder are payable in England or in Australia and upon the Company :

Power to
court to
order meet-
ing of
holders of
deposit
receipts and
sanction
compromise
or arrange-
ment.

Provided always as follows :—

- (1.) No compromise or arrangement under this Act shall be sanctioned by the Court if within six months prior to the date on which the same shall have been so agreed to any dividend shall have been paid by the Company either on its preference or ordinary share capital :
- (2.) The Court shall consider the merits of any such compromise or arrangement and shall have an absolute discretion to confirm amend or alter the same in any way the Court sees fit or to reject any such compromise or arrangement :
- (3.) If any such compromise or arrangement shall involve any reduction in the rate of interest payable to the holders of the said deposit receipts under the old scheme such compromise or arrangement (herein-after called "the new scheme") shall provide that the Company shall keep an accurate record of the difference between the amount of interest on the said deposit receipts payable under the old scheme and the amount of interest on the said deposit receipts paid under the new scheme (such difference being herein-after referred

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to as "the unpaid interest") and shall provide that the unpaid interest shall be distributed pro rata among the holders of the said deposit receipts as and when the profits of the Company after making all such deductions (if any) as the Court when sanctioning the new scheme shall approve will admit of such distribution and also that so long as any portion of such unpaid interest shall remain undistributed no dividend shall be paid on the preference or the ordinary share capital of the Company :

(4.) In the event of the Company being at any time hereafter wound up the holders of the said deposit receipts shall be entitled to prove for so much of the unpaid interest as shall not have been paid to them as well as for the unpaid balance of the principal of their deposit receipts.

Compromise or arrangement may modify rights under memorandum or articles.

3. Any compromise or arrangement under this Act may subject to the provisions of this Act modify or extinguish any of the respective rights or obligations of the Company and the holders of the said deposit receipts under the old scheme or under the memorandum or articles of association of the Company or otherwise.

Subsidiary powers of Court.

4. In this Act "the Court" shall mean the Chancery Division of Her Majesty's High Court of Justice in England and the Court shall for the purposes of proceedings under this Act be invested with and capable of exercising without a winding-up all the rights powers authorities and discretions applicable to the case which the Court would have been invested with or could have exercised if the Company had at the date of the application to the Court for the summoning of the meeting commenced to be wound up voluntarily under the Companies Acts 1862 and 1867 and had on that date proposed a compromise or arrangement under the Joint Stock Companies Arrangement Act 1870 including in particular power to order the holding of any one or more meetings of members of the Company or to make any modifications in any compromise or arrangement and power to direct the summoning and holding of one or more fresh first meetings to consider any compromise or arrangement or any proposed modifications thereof.

Company may continue business.

5. The institution of any proceedings under this Act shall not in any way hinder or prevent the Company from continuing its business.

Trustees &c. may consent to compromise or arrangement.

6. Trustees executors administrators and all other persons holding securities of the Company in any representative or fiduciary capacity are hereby authorised if in their discretion they think fit to consent

to any compromise or arrangement under this Act or any modification thereof and are indemnified for all acts done bonâ fide by them in pursuance of the provisions of this Act. A.D. 1897. —

7. The old scheme and the memorandum and articles of association of the Company shall be and are hereby amended so as to conform with the provisions of any compromise or arrangement under this Act as and when the same shall be sanctioned by the Court and the Court shall have power to order that the old scheme and memorandum and articles of association shall be verbally amended accordingly and that as amended they shall be filed with the Registrar of Joint Stock Companies and be used thereafter for all purposes in place of the old scheme as set forth in the Schedule hereto and of the memorandum and articles of association as previously filed with the said registrar. Amendment of old scheme of arrangement and memorandum and articles of association.

8. A printed copy of this Act shall be filed by the Company with the Registrar of Joint Stock Companies who shall receive and file the same and if such copy shall not be delivered to the Registrar within three months from the passing of this Act the Company shall incur a penalty not exceeding ten pounds for every day after the expiration of the said three months during which the Company shall omit to deliver the said copy and every director and manager of the Company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty and every penalty under this section shall be recoverable summarily. Act to be registered.

9. To every copy of the memorandum and articles of association of the Company supplied after the passing of this Act to any member under the provisions of section 19 of the Companies Act 1862 until the same shall have been amended as provided in this Act and in any compromise or arrangement sanctioned by the Court there shall be annexed a copy of this Act which for the purposes of that section shall be treated as part of the memorandum and articles of association of the Company and any deposit receipt holder shall be entitled to receive a copy of such memorandum and articles of association as so amended on the same terms as any member of the Company is entitled to receive the same. Copy of Act to be supplied to members on request.

10. Unless the Court shall sanction some compromise or arrangement under this Act within two years after the passing of this Act or some compromise or arrangement under this Act shall then be under appeal from a decision of the Court or the Court shall on application made think fit to extend the said period of two years the provisions of this Act shall be void and of none effect. Limitation of time.

[Ch. xviii.] *London Bank of Australia, Limited, Act, 1897.* [60 VICT.]

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Costs of
Act &c.

11. All costs charges and expenses of and incident to the preparing for obtaining and passing of this Act and of obtaining the requisite consents and sanction to any compromise or arrangement under this Act or otherwise in relation thereto shall be paid by the Company.

The SCHEDULE.

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COPY SCHEME OF ARRANGEMENT 1893.

The share capital of the Bank is 1,000,000*l.* in 50,000 shares of 20*l.* each fully paid but with a further liability on winding-up of 20*l.* per share

1,000,000*l.*

The liabilities of the Bank on the 25th April 1893 were approximately—

	<i>£</i>	<i>£</i>	<i>£</i>
(a) Amounts due on terminable deposits and on current accounts -		5,841,819	
(b) Bank drafts or acceptances current or due at date of suspension -	288,632		
(c) Amounts due to Government -	448,099		
(d) Amounts due on note issue -	243,360		
	<u>980,091</u>		
			<u>6,821,910</u>

(c) and (d) constitute preferential claims and it is considered imperative in order to maintain the business connexions of the Bank to provide for the payment in cash of (b).

1. A new company shall be formed and registered under the Companies Acts 1862 to 1890 entitled the London Bank of Australia Limited herein-after called the New Bank. The capital of the new company shall be 4,000,000*l.* divided into 62,500 ordinary shares of 40*l.* each and 150,000 5½ per cent. preference shares of 10*l.* each cumulative as to dividend and preferential as to capital in manner herein-after provided.

2. The remaining liability of 20*l.* per share on the shares in the Old Bank shall be immediately called up and the winding-up of the Old Bank shall continue for the purpose of making and enforcing this call and applying the proceeds thereof in or towards payment of the above 980,091*l.* of claims and interest and the costs of the winding-up and the liquidator shall make and enforce the call and apply the same accordingly. In the event of any deficiency the New Bank shall make good the same by paying the necessary sum in cash to the liquidator or as he shall direct.

3. Every shareholder in the Old Bank on applying for shares in the New Bank shall be allotted ordinary shares therein equal in number to the shares in the Old Bank held by him in respect of which he shall so apply of the nominal value of 40*l.* each with 15*l.* credited as paid up thereon on the terms that the liability thereon shall be payable as herein-after mentioned and he shall be indemnified by the New Bank against the payment of any call made on the shares of the Old Bank in respect of which he shall so apply.

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4. The New Bank shall assume and provide for as herein-after mentioned all the liabilities of the Old Bank other than the said 980,091*l.* claims above referred to and shall purchase and take over the whole of the assets business and goodwill of the Old Bank other than the proceeds of the said 20*l.* call and other than the proceeds of any shares in the New Bank realised by the liquidator as herein-after mentioned the New Bank issuing ordinary shares of 40*l.* each with 15*l.* credited as paid up thereon share for share to such shareholders of the Old Bank as may apply therefor. Such of the said shares as shall not be applied for and taken up by the shareholders of the Old Bank as aforesaid within a reasonable time to be fixed by the liquidator shall be issued to such persons as the liquidator may approve each with the sum of 15*l.* credited as paid up thereon. The liquidator shall be entitled to call for deal with and realise the said last-mentioned shares as part of the assets to be retained in and for the purposes of the winding-up of the Old Bank on such terms as he shall think proper.

5. The 25*l.* per share liability on the ordinary shares in the New Bank will be payable as follows:—

2 <i>l.</i> 10 <i>s.</i> on 1st August 1893	} or at an earlier date at the option of the shareholder under rebate at Bank of England rate for the time being :
2 <i>l.</i> 10 <i>s.</i> on 1st November 1893	
2 <i>l.</i> 10 <i>s.</i> on 1st February 1894 and	
2 <i>l.</i> 10 <i>s.</i> on 1st November 1894	

And in the event of a transfer of any share before such liability of 10*l.* is paid the transferor shall be a surety to the New Company for the payment thereof by the transferee. The remaining liability of 15*l.* will as to 2*l.* 10*s.* be called up after the 1st May 1895 when in the judgment of the directors of the New Bank it may be expedient and will as to the balance of 12*l.* 10*s.* remain as a reserve liability in pursuance of the Statute to that effect. Provided that any shareholder in the Old Bank being a trustee or in any other representative character taking shares in the New Bank may at his option to be testified in writing on applying for such shares pay up the full liability of 25*l.* upon allotment and shall be entitled to interest at the rate of 3 per cent. per annum upon 12*l.* 10*s.* of the 25*l.* so paid up. The resolution of the New Bank creating the reserve liability under the Statute shall be restricted to the share capital of the New Bank other than such shares so fully paid up.

6. The New Bank shall pay in cash all rates taxes wages and other similar claims if any which would be payable in full or in priority in the winding-up of the Old Bank and all interest on the 1st of July 1893 due or accruing due on such of the several debts in respect of which the deposit receipts and cumulative preference shares herein-after mentioned shall have been issued as carry interest. The New Bank besides paying as herein-before provided any deficiency in respect of the debts and liabilities which under this scheme are to be borne by the liquidator of the Old Bank in the winding-up thereof with interest thereon shall also pay so much of the fees costs charges and expenses including the remuneration of the provisional and any subsequent liquidator as the proceeds of the said call of 20*l.* per share and any other assets retained by the liquidator shall be insufficient to satisfy and the liquidator shall be entitled to a lien over the assets of the Old Bank acquired and taken over by the New Bank for any moneys payable by the New Bank under this scheme.

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7. The New Bank shall issue to any creditor of the Old Bank applying for the same within a reasonable time to be fixed by the liquidator (other than creditors in respect of the said 980,091*l.* of claims) fully paid 5½ per cent. cumulative preference shares of a nominal amount equal to the amount of such creditor's claim. Any creditor applying for such shares shall take them in discharge of so much of his claim as shall be equal to the nominal amount of his shares. These preference shares shall subject as hereinafter provided be cumulative as to dividend up to 5½ per cent. and preferential as to capital and after 5 per cent. has been paid on the ordinary shares shall be entitled to a moiety of any divisible surplus profits up to a total dividend of 7 per cent. provided that when the New Bank shall have paid to the preference shareholders five yearly dividends at the rate last named preference as to dividend shall cease. In the event of cumulative preference shares to a larger amount than 1,500,000*l.* being applied for by creditors the said total issue of 1,500,000*l.* shall be allotted pro rata among the applicants in proportion to the amount of the claims in respect of which they apply.

8. The New Bank shall issue and the creditors shall take in discharge of the liabilities of the Old Bank other than the said 980,091*l.* of claims and other than its liabilities discharged by the issue of preference shares deposit receipts bearing interest at 4½ per cent. payable half-yearly the principal of which shall be payable as follows :—

One tenth on 1st July 1898.			One tenth on 1st July 1903.		
Do.	do.	1899.	Do.	do.	1904.
Do.	do.	1900.	Do.	do.	1905.
Do.	do.	1901.	Do.	do.	1906.
Do.	do.	1902.	Do.	do.	1907.

The New Bank shall have the option of paying off any of the instalments at an earlier date on giving six months notice.

9. No dividend in excess of 5 per cent. shall be paid on the ordinary share capital of the New Bank until all the instalments of the deposit receipts shall have been paid with interest and until such payment any divisible surplus profits of the New Bank after payment of the dividend on the preference shares and a 5 per cent. dividend on the ordinary shares shall be credited to a fund appropriated to the payment of such instalments.

10. The directors of the New Bank shall have a discretionary power of granting an overdraft to every original holder of deposit receipts issued in respect of current accounts and upon the security of such receipts.

11. The interest payable on deposit receipts shall be payable on the 1st July and 1st January in every year commencing with the 1st January 1894 interest on the several debts in respect of which such deposit receipts shall have been issued having been paid as herein-before provided in clause 6 down to the 1st July 1893.

12. The regulations of the New Bank shall provide for the holders of the deposit receipts of the New Bank appointing from time to time at least three of the directors of the New Bank out of a total of seven or four out of a total of eight or nine:

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13. The New Bank shall be authorised by its memorandum of association to issue notes but in order to provide a fund to meet the statutory liability of its shareholders in respect of such issue shall be bound by such memorandum to set apart from time to time and keep invested in investments in which trustees are or for the time being shall be authorised by the law of England to invest trust funds such sums as that the invested fund for the time being shall at its market price for the time being be equal to the liability of the New Bank for the time being on its note issue and so that the fund so invested shall be constituted a trust fund for or shall be specifically charged to meet the claims of the note holders and shall be available for payment of the note holders only and not for payment of the general creditors of the New Bank.

14. Nothing in this scheme contained shall prejudice or affect any existing security lien or charge upon the assets of the Old Bank.

15. The memorandum of association of the New Bank shall confer power on the directors with the sanction of the shareholders to amalgamate with any other banking institution.

16. If in the future realisation or valuation for balance sheet purposes of the assets taken over by the New Bank such assets shall be found to exceed in value the amount of the consideration given for the same by the New Bank such excess shall be carried to the credit of a reserve account in the books of the New Bank and shall not be available or be reckoned as an asset of the New Bank for the purpose of ascertaining the profit available for dividends.

17. All details in connexion with the carrying out of this scheme shall be settled by the liquidator who may assent to any modification in the details of the scheme which the Court may think fit to approve or impose.

Dated 9th day of June 1893.

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