

# MAINE STATE LEGISLATURE

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## CHAPTER 95

## MANAGEMENT

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**§ 1041. Board of directors; committees and officers; false returns; bonds**

All the corporate powers of any trust company shall be exercised by a board of not less than 5 directors,  $\frac{2}{3}$  of whom shall be residents of this State, whose number and term of office shall be determined and who shall be elected by a vote of the stockholders at the first meeting held by the incorporators and at each annual meeting thereafter. Directors shall hold a regular meeting at least once each month. The stockholders at any annual meeting may elect from the full board of directors an executive committee of not less than 5 members,  $\frac{2}{3}$  of whom shall be residents of this State, and delegate to such committee the powers of the directors in regard to the ordinary operations of the business of the company; such powers to be exercised by such committee at all times when said board of directors is not in session; subject always to any specific vote of said board of directors. All such committees shall keep full minutes of all business transacted by them and shall make such reports of their transactions at each monthly meeting of the board as said board or the commissioner may require. The directors shall be annually sworn to the proper discharge of their duties, and they shall hold office until others are elected and qualified in their stead.

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If any vacancy occurs in the board of directors or executive committee through death, resignation or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation. The oath of office of any director shall be taken within 30 days of his election or his office shall become vacant. The clerk of such company shall, within 10 days, notify such directors of their election and within 30 days shall publish the list of all persons who have taken the oath of office as directors. The removal of any director from this State shall immediately vacate his office if such removal leaves less than  $\frac{2}{3}$  of the membership resident in the State. The board of directors shall elect a president from its number, a clerk who shall be sworn to the faithful performance of his duties, a treasurer and such other officers as they may deem necessary. Any officer or employee of any trust company who shall willfully or knowingly make a false return to the commissioner in response to any call for information issued by said commissioner or by the deputy bank commissioner, or upon making or filing of any regular or special report, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both. The president, treasurer, assistant treasurer and all other officials and employees having access to moneys or securities shall be bonded as in the case of similar officials in savings banks, and section 473, subsection 2, so far as applicable, shall apply to the bonds of trust company officials and employees.

R.S.1954, c. 59, § 107; 1955, c. 380, § 4.

**§ 1042. Duties of board and committees; record of loans; list of demand obligations**

The directors or executive committee shall keep or cause to be kept in a book or books appropriate therefor a record of all loans and investments of every description made by a trust company, substantially in the order of time when such loans or investments are made. Such record shall show that such loans or investments have been made with the approval of the directors or executive committee of said company and shall indicate such particulars respecting such loans and investments as the commissioner shall direct. Whenever requested, such record shall be submitted to the commissioner or to any meeting of the directors or stockholders. Such loans and investments shall be classified in said book or books of record as the commissioner shall direct. The treasurer or other officer having charge of such loans shall submit to the directors or executive committee at

intervals of not more than 6 months a full and complete list of all outstanding demand obligations owed to the company.

R.S.1954, c. 59, § 108.

### § 1043. Qualifications of directors

No person shall be eligible to the position of a director of any trust company unless he is actual owner of stock amounting to \$1,000 par value, or is a nominee of a registered bank holding company holding stock in such trust company in such an amount.

R.S.1954, c. 59, § 109; 1963, c. 404.

### § 1044. Cash reserve

Every trust company having authority to receive money on deposit shall at all times have on hand in the lawful money or national bank notes of the United States, as a cash reserve, an amount equal to at least 15% of the aggregate amount of its deposits which are subject to withdrawal upon demand or within 10 days. Said reserve may consist of balances payable on demand due from any trust company created under the laws of this State, or from any trust company located in any of the other New England states or in the state of New York, or from any trust company located in any of the states of the United States which is a member of the federal reserve system or from any national bank, and approved by the commissioner in writing. No banking organization not a member of the federal reserve system should be required to maintain reserves against war loan deposits, that is, deposits payable to the United States arising solely as a result of subscriptions made by or through banking organizations for United States Government securities, which are not required by federal reserve member banks. Whenever said reserve shall be below said percentage of such deposits, such corporation shall not further diminish the amount of its legal reserve by making any new loans until the required proportion between the aggregate amount of such deposits and its cash reserve shall be restored. The commissioner is authorized and empowered to raise or lower said cash reserve requirements on demand deposits and to establish reserves which shall be maintained on time deposits as in his judgment banking conditions may justify, provided such power to raise and establish reserves shall be limited to a percentage of such deposits not in excess of reserve requirements which may be from time to time established by the Federal Reserve Board. Any trust company may become a stockholder

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in a federal reserve bank within the federal reserve district where said trust company is situated, and while such trust company continues as a member bank under the United States "Federal Reserve Act," approved December 23, 1913, or any acts in amendment thereof, shall be subject to said "Federal Reserve Act" and any amendments thereof relative to bank reserves in substitution for the requirements of this section. Every such trust company may have and exercise any and all of the corporate powers and privileges which may be exercised by member banks under the "Federal Reserve Act" or any acts in amendment thereof or in addition thereto. All provisions of charters in conflict with this section are void.

R.S.1954, c. 59, § 115.

**§ 1045. Surplus fund**

Every trust company shall set apart as a surplus not less than 10% of its net earnings in each and every year until such surplus, together with any unimpaired surplus paid in, shall amount to  $\frac{1}{2}$  of the capital stock of the company. The said surplus shall be kept to secure against losses and contingencies and whenever the same becomes impaired, it shall be reimbursed in the manner provided for its accumulation.

R.S.1954, c. 59, § 116.

**§ 1046. Borrowing capacity**

No trust company, not a member of the federal reserve system, shall be at any time indebted for borrowed money to an amount in excess of its capital, surplus and net undivided profits, except that by vote of a majority of its entire board of directors or executive committee, setting forth the reasons therefor, it may borrow to meet withdrawals of depositors or to prevent loss by sales of assets. Copies of all votes authorizing such excess borrowings shall be promptly forwarded by the clerk to the commissioner. Rediscounts, other than those of drafts or bills of exchange secured by bills of lading of agricultural products and payable at sight or upon arrival, shall be considered as borrowed money for the purpose of this section.

R.S.1954, c. 59, § 118.

**§ 1047. Stock in federal reserve banks may be acquired and held**

Any trust company which is or hereafter may become a member in the federal reserve bank within the federal reserve district where such trust company is situated under the United States "Federal Reserve Act" or any acts in amendment thereof may acquire and hold shares of stock of said federal reserve bank. Such trust company may acquire and hold shares of stock of the "Federal Deposit Insurance Corporation" under the United States "Banking Act of 1933" and while such trust company continues as a member bank is authorized to exercise such power and do any and all things necessary to avail itself of the benefits of said "Banking Act of 1933" and any acts in amendment thereof, and any other acts of Congress granting powers to or conferring benefits on such member bank now or hereafter passed, without otherwise limiting or impairing in any way the authority conferred upon the commissioner under the laws of this State.

R.S.1954, c. 59, § 93.

**§ 1048. Statement of inactive accounts; payment to State**

The treasurer of every trust company shall on or before the first day of November cause to be published in a newspaper in the place where the bank is located, if any, otherwise in a newspaper published in the nearest place thereto, a statement containing the name, the amount standing to his credit, the last known place of residence or post-office address and the fact of death, if known, of every savings or demand depositor in said bank who shall not have made a deposit therein or withdrawn therefrom any part of his deposit, or any part of the dividends thereon, for a period of more than 20 years next preceding. This section shall not apply to the deposits of persons known to the treasurer to be living, to a deposit the deposit book of which has during such period been brought into the bank to be verified or to have the dividends added or to a deposit which, with the accumulations thereon, shall be less than \$50. Such publication, in addition to the above-required information, shall state that 2 years after the date of publication all moneys in such inactive accounts shall be paid into the State Treasury. Said treasurer shall transmit a copy of such statement to the commissioner, to be placed on file in his office for public inspection. Any treasurer neglecting to comply with this section shall be punished by a fine of \$50. Two years after the date of such publication, all moneys in such inactive accounts shall be deemed presumptively abandoned and

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shall be paid into the State Treasury and credited to the General Fund for the use of the State, and there shall be paid into the State Treasury, and so credited at the end of 20 years after the last deposit, all deposits, inactive as aforesaid, which with accumulations thereon shall be less than \$50. After payment into the State Treasury of such deposits, no action shall be maintained in any court in this State by any depositor or his heirs, successors or assigns against any bank making such payments. Thereafter any lawful claimants may petition the Governor and Council for payment of such moneys to the claimants. In his petition the claimant shall state fully the facts showing the basis of his right, title and interest in such deposit. The Governor and Council, after a hearing, shall determine who are lawful claimants and shall authorize payment by the Treasurer of State from the General Fund to such claimants.

R.S.1954, c. 59, § 120; 1959, c. 29, § 2; 1961, c. 317, § 169; c. 417, § 151.

**§ 1049. Annual examinations**

Two of the directors, at least, of a trust company shall once in each year thoroughly examine the affairs of the company, settle the treasurer's account and report under oath to the commissioner the standing of the company, the situation of its funds and all other matters which the said commissioner requires, in the manner and according to the form that he prescribes, and publish an abstract thereof, if required. The said commissioner shall seasonably give notice of the time and furnish blanks for said examination and report. In lieu of an examination by said directors, a trust company may either employ an independent public accounting firm approved by the commissioner to perform said examination and render said report or may use an internal audit program approved by the commissioner.

R.S.1954, c. 59, § 122; 1959, c. 159.

**§ 1050. Liability of stockholders**

As to deposits in and claims outstanding against trust companies on July 24, 1937, the liability of stockholders shall be as provided by law until terminated in accordance with this section. Such liability shall cease on November 1, 1937 with respect to all shares of stock issued by any trust company which shall be transacting the business of banking on November 1, 1937, provided not less than 3 months prior to such date such trust com-

pany shall have caused notice of such prospective termination of liability to be published in a daily newspaper if any, otherwise in a weekly newspaper published in the city, town or county in which the principal office of such trust company is located. If the trust company fails to give such notice as and when provided, a termination of such liability may thereafter be accomplished as of the date 3 months subsequent to publication in the manner provided. No such notice shall be required as to shares of common stock in any trust company issued after December 16, 1933, which shall not in any event be subject to any liability to the depositors or any other creditor thereof.

R.S.1954, c. 59, § 126.

### **§ 1051. Proceedings when capital stock impaired**

When the capital stock of a trust company shall become impaired by losses or otherwise, the commissioner may ascertain and determine the facts and give notice in writing to such company to make good the deficiency so appearing, within such time as he may order. The directors of such trust company, unless they shall by proper vote otherwise determine, shall forthwith levy an assessment upon the stock thereof sufficient to make good such deficiency and shall forthwith notify each stockholder of such requisition by giving him in hand or mailing to him at his last known address, postage prepaid, a written or printed notice which shall state the amount of assessment to be paid by him and the time within which it shall be paid, which time shall not be less than 60 days from the date of such notice. Such assessment shall be due and payable by each stockholder within the time specified in said notice and if any stockholder shall fail to pay the assessment specified in said notice within the time fixed therein, the directors of said trust company shall have the right to sell at public auction to the highest bidder the stock of each delinquent stockholder, after giving previous notice of such sale by publication thereof at least once a week for 3 successive weeks in some newspaper of general circulation in the county where the principal place of business of said trust company is located. A copy of such notice of sale shall be given in hand to such delinquent stockholder or mailed to him at his last known address, postage prepaid, at least 10 days before the date fixed for said sale; or such stock may be sold at private sale and without such notice. Before making such private sale thereof, an offer in writing to purchase said stock shall first be obtained and a copy thereof served upon the owner of record of the stock sought to be sold, either personally

by giving him in hand a copy of such offer or mailing the same to him at his last known address, postage prepaid, and if after service of such offer, such owner shall still refuse or neglect to pay such assessment within 2 weeks from the time of the service of such offer, the said directors may accept such offer and sell such stock to the person making such offer or to any other person or persons making a larger offer than the amount named in the offer submitted to the stockholder; but such stock shall in no event be sold for a smaller sum than the valuation put on it by the commissioner in his determination and requisition as to said assessment, nor for less than the amount of said assessment so called for and the expense of the sale. Out of the avails of the stock so sold, the directors shall pay the amount of assessment levied thereon, and the necessary costs of sale. The balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold and shall make the same null and void and a new certificate shall be issued by the company to the purchaser thereof. Any stockholder aggrieved by any action of the commissioner or the directors of such company under the foregoing provisions may, within 10 days after receiving notice thereof, apply by appropriate proceedings to the Superior Court whose decision, after due hearing, shall be final in the matters complained of. In the event that the directors of any trust company upon notification by the commissioner shall not vote within 10 days after receipt of said notification to make an assessment upon the stock under the foregoing provisions, the commissioner or the directors of such company may file a complaint in the Superior Court, setting forth the fact that such capital stock is impaired and asking said court to order an assessment upon the capital stock sufficient to meet the impairment and make the corporation solvent. After giving due notice and hearing to all parties interested, the court shall, if it finds the capital stock to be impaired, order an assessment to be made upon such stock. Such assessment, when made, shall be due and payable by each stockholder to the treasurer of said company on order of said court within 60 days from the time such order is made. If any stockholder or stockholders of said company shall neglect or refuse, after due notice, to pay the assessment ordered within the time specified, a sufficient amount of the capital stock of such stockholder or stockholders may, after due notice given, be sold under the direction of the court to pay such assessment and the costs of sale. After paying the assessment and costs from the proceeds of such sale, the balance, if any, shall

be returned to the delinquent stockholder or stockholders. If no bidder can be found who will pay for such stock the amount of the assessment due thereon and the costs of the advertisement and sale, the amount previously paid by such stockholder or stockholders and said stock shall be forfeited to the company; and shall be sold by said company as the directors shall order, within 6 months from the time of said forfeiture.

R.S.1954, c. 59, § 127; 1961, c. 317, § 170.

### **§ 1052. General rights of creditors not impaired**

Nothing in sections 1050 and 1051 shall be construed to take away the general rights of creditors to enforce the liability of stockholders in such corporation in any manner provided by statute, or the right to proceed against the corporation under section 951.

R.S.1954, c. 59, § 128.

### **§ 1053. Governmental units may participate in banking reorganization**

The Treasurer of State, by written direction of the Governor and Council and with the approval of a Justice of the Supreme Judicial Court; the treasurer of any county, by written direction of the county commissioners of such county and with the approval of a Justice of the Supreme Judicial Court; the treasurer of any city, town or village corporation or other municipal corporation, including any district organized by law for any public purpose, by written direction, in case of cities of the city government thereof, in case of towns of the selectmen thereof, in case of village corporations of the assessors, overseers or other similar governing board thereof, in case of other municipal corporations and districts of their respective trustees, commissioners, directors or other similar governing board, and in each case with the approval of a Justice of the Supreme Judicial Court, may for and in behalf and in the name of his respective governmental unit participate in any plan of reorganization, management or continuation of any trust company organized under the laws of this State or of the United States in which his governmental unit has moneys on deposit including trust funds, sinking funds and all other forms of deposit, or may enter into any agreement concerning such deposits for the public benefit and for the benefit of the trust company and its depositors.

R.S.1954, c. 59, § 129.