

[AS REPORTED FROM THE JUSTICE AND LAW REFORM  
COMMITTEE]

*House of Representatives, 20 November 1991.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

*Hon. D. A. M. Graham*

## SECURITIES TRANSFER

### ANALYSIS

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### A BILL INTITULED

#### **An Act to consolidate and amend the law relating to the transfer of securities and to repeal the Securities Transfer Act 1977**

5 BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title**—This Act may be cited as the Securities Transfer Act 1991.

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

10 “Authorised public securities dealer” means a person (including a body of persons, whether incorporated or

No. 90—2

*Price  
incl. GST \$2.30*

- not) for the time being approved by the Minister of Finance, by notice in the *Gazette*, as a public securities dealer for the purposes of this Act:
- “Authorised transaction” means a sale, gift, or other disposition of securities in which each of the parties is, or is acting through the agency of,— 5
- (a) A member of a stock exchange; or
  - (b) A solicitor (as defined in section 2 of the Law Practitioners Act 1982) in practice on his or her own account; or 10
  - (c) A chartered accountant in public practice (as defined in section 2 of the New Zealand Society of Accountants Act 1958); or
  - (d) A trustee corporation (as defined in section 2 of the Trustee Act 1956); or 15
  - (e) A registered bank (as defined in section 2 of the Reserve Bank of New Zealand Act 1989); or
  - (f) An authorised public securities dealer— acting in the ordinary course of business as such: 20
- “Brokers transfer” means a document in, or to the effect of, the form set out in the Second Schedule to this Act: 20
- “Company” has the same meaning as in section 2 (1) of the Companies Act 1955, except that it also includes an overseas company, but does not include a company limited by guarantee, an unlimited company, or a flat or office owning company: 25
- “Company limited by guarantee” has the meaning assigned to it by section 13 (2) (b) of the Companies Act 1955: 30
- “Debenture stock” includes debentures that form part of a series of debentures secured by charges of equal priority:
- “Flat or office owning company” has the same meaning as in section 2 (1) of the Companies Amendment Act 1964: 35
- “Minister” means the Minister of Justice:
- “Overseas company” has the same meaning as in section 2 (1) of the Companies Act 1955:
- “Registered”, in relation to securities, means that the names of the holders thereof are entered in a register kept in New Zealand: 40
- “Securities” means—
- (a) Shares, debenture stock, bonds, or notes, issued by a company; or 45

(b) Shares, debenture stock, bonds, or notes, that are issued by a body corporate (other than a company) and listed on a stock exchange; or

5 (c) An interest in a unit trust (as defined in section 2 (1) of the Unit Trusts Act 1960); or

(d) A public security (as defined in section 2 (1) of the Public Finance Act 1989); or

10 (e) Debentures or stock issued under the Local Authorities Loans Act 1956; or

(f) Any other securities that are from time to time declared by the Governor-General, by Order in Council, to be securities for the purposes of this Act—that are transferable (*fully paid up*), and registered:

15 “Securities transfer” means a document in, or to the effect of, the form set out in the First Schedule to this Act:

“Share”, in relation to a company or a body corporate (other than a company), means a share in the share capital of the company or body corporate; and includes stock and an option to acquire a share or shares; but does not include a labour share (as defined in section 2 (1) of the Companies Act 1955):

20 “Stock exchange” means a stock exchange registered under the Sharebrokers Act 1908:

“Stock exchange transaction” means a sale and purchase of securities in which each of the parties is, or is acting through the agency of, a member of a stock exchange acting in the ordinary course of business as such:

25 “Unlimited company” has the meaning assigned to it by section 13 (2) (c) of the Companies Act 1955.

30 Cf. 1977, No. 20, s. 2; 1977, No. 65, s. 160 (1); 1987, No. 155, s. 2

### 3. Transfer of securities by securities transfer—

35 Securities (as defined in section 2 of this Act) sold, given, or otherwise disposed of in an authorised transaction may, if they are fully paid up, be transferred by means of a securities transfer that complies with both of the following requirements:

(a) Both parts of the transfer are duly completed:

40 (b) The transfer is executed, in New Zealand, by the transferor (whether or not it is also executed by the transferee).

Cf. 1977, No. 20, s. 3

**4. Transfer of securities by securities transfer and brokers transfer**—Securities (as defined in **section 2** of this Act) sold in a stock exchange transaction may, whether or not they are fully paid up, be transferred by means of—

- (a) A securities transfer that complies with all the following requirements: 5
- (i) Part I of the transfer is duly completed:
  - (ii) The transfer is executed, in New Zealand, by the transferor (whether or not it is also executed by the transferee): 10
  - (iii) The transfer specifies securities that include the securities sold;—
- together with—
- (b) A duly completed brokers transfer that specifies the securities sold. 15

Cf. 1977, No. 20, s. 4

**5. Attestation of securities transfer unnecessary**—

- (1) The execution of a securities transfer need not be attested.
- (2) Nothing in **subsection (1)** of this section affects any enactment, rule of law, memorandum or articles of association, deed, or agreement, regulating the execution of documents by companies or other bodies corporate or by any particular company or body corporate. 20

Cf. 1977, No. 20, s. 5

**6. Securities and brokers transfers to be instruments of transfer for the purposes of other Acts, etc.**—(1) For the purposes of any enactment, memorandum or articles of association, deed, or agreement, that relates to the transfer of securities or to instruments (or memoranda) of transfer of securities,— 25

- (a) A securities transfer to which **section 3** of this Act applies shall be an instrument (or memorandum) of transfer of the securities specified therein: 30
- (b) A securities transfer to which **section 4** of this Act applies and a duly completed brokers transfer shall together be an instrument (or memorandum) of transfer of the securities specified in both transfers. 35
- (2) For the purposes of section 89 of the Companies Act 1955 (which relates to certification of transfers), a duly completed brokers transfer by itself shall be deemed to be an instrument of transfer of the securities specified therein. 40

Cf. 1977, No. 20, s. 6 (1)

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**7. Transfer of securities by electronic means**—(1) The Governor-General may from time to time, on the advice of the Minister given in accordance with a recommendation of the Securities Commission, by Order in Council, approve a system for the transfer of securities (as defined in **section 2** of this Act) that is wholly or partly electronic.

(2) The Commission shall not make a recommendation under **subsection (1)** of this section unless—

(a) The Commission has consulted with such persons or representatives of such persons and such organisations as the Commission considers will be substantially affected by any Order in Council made in accordance with the recommendation and those persons and organisations have had the opportunity to comment to the Commission; and

(b) The Commission has considered any such comments.

(3) An Order in Council under this section may approve a system of transfer by reference to the name of the system or any name by which it is commonly known.

(4) Securities (as defined in **section 2** of this Act) sold, given, or otherwise disposed of, whether in an authorised transaction or stock exchange transaction or otherwise may be transferred in accordance with a system of transfer that is approved by the Governor-General by Order in Council under this section.

*New*

**7. Transfer of securities by electronic means**—(1) The Governor-General may from time to time, on the advice of the Minister given in accordance with a recommendation of the Securities Commission, by Order in Council, approve a system or systems that is or that are wholly or partly electronic for the transfer of securities (as defined in **section 2** of this Act).

(2) A system of transfer may be approved under this section by reference to the name of the system or any name by which it is commonly known.

(3) Without limiting **subsection (1)** of this section, a system of transfer may be approved under this section whether or not it also involves the use of a procedure or part of a procedure for

*New*

the transfer of securities that is authorised under this Act or otherwise.

(4) Modifications of a minor technical nature may, from time to time, be made to a system of transfer approved by an Order in Council made under this section and, in any such case, the system incorporating those modifications shall be deemed to have been approved by the order. 5

(5) Securities (as defined in **section 2** of this Act) sold, given, or otherwise disposed of, whether in an authorised transaction or stock exchange transaction or otherwise may, whether or not they are fully paid up, be transferred in accordance with a system of transfer that is approved by the Governor-General by Order in Council under this section. 10

(6) The Commission shall not make a recommendation under **subsection (1)** of this section unless— 15

(a) The Commission has done everything reasonably possible to consult with such persons and organisations or their representatives as the Commission considers will be substantially affected by any Order in Council made in accordance with the recommendation and those persons and organisations or their representatives have had the opportunity to comment to the Commission; and 20

(b) The Commission has considered any such comments. 25

(7) A failure to comply with **subsection (6)** of this section does not affect the validity of any Order in Council made under this section.

(8) Every Order in Council made under this section shall be deemed to be a regulation within the meaning of section 2 of the Regulations (Disallowance) Act 1989. 30

**8. Registration may not be refused on ground that securities have been transferred under this Act—**

(1) Where securities have been transferred in accordance with **section 3** or **section 4** or **section 7** of this Act, no person shall refuse to register the transfer on the ground that the securities have been so transferred or that the securities have not been transferred by other means. 35

(2) Nothing in this section shall affect any right a person has to refuse to register a transfer of securities on any other ground.

Cf. 1977, No. 20, s. 7

5       **9. Effect of this Act on other Acts, etc.**—(1) Except as provided in this section, **sections 3 to 8** of this Act shall have effect notwithstanding anything to the contrary in any enactment, rule of law, memorandum or articles of association, deed, or agreement.

10       (2) **Sections 3 to 8** of this Act shall be subject to section 430 of the Companies Act 1955 (which specifies special provisions as to the transfer of shares in mining companies).

15       (3) Nothing in this Act shall in any way derogate from section 45G (3) of the Reserve Bank of New Zealand Act 1964 (as continued in force by section 84 of the Public Finance Act 1989).

(4) Nothing in this Act affects the validity of any means of transferring securities other than pursuant to this Act.

20       (5) The following enactments shall be read subject to the provisions of this Act:

(a) Sections 82 and 84 of the Companies Act 1955:

(b) Section 17 of the Unit Trusts Act 1960:

25       (c) Section 45i of the Reserve Bank of New Zealand Act 1964 (as continued in force by section 84 of the Public Finance Act 1989):

(d) Section 60 of the Local Authorities Loans Act 1956.

(6) Nothing in **subsection (5)** of this section limits the generality of any other provision of this Act.

Cf. 1977, No. 20, s. 8; 1977, No. 68, s. 5 (1)

30       **10. Power to alter forms**—(1) The Governor-General may from time to time, by Order in Council, alter, add to, or substitute a new form for, either of the forms set out in the **First** and **Second** Schedules to this Act.

35       (2) Any reference in this Act to a form in a Schedule to this Act shall be construed as a reference to that form with any alterations or additions made, or to any form substituted for that form, by any Order in Council for the time being in force under this section.

40       (3) An Order in Council made under this section shall not apply in respect of—

(a) Any securities transfer that has been executed by the transferor; or

(b) Any brokers transfer that has been duly completed—

before the Order in Council comes into force; and any such securities transfer or brokers transfer shall have effect as if the Order in Council had not been made.

Cf. 1977, No. 20, s. 9

**11. Repeals**—The enactments specified in the **Third Schedule** 5  
to this Act are hereby repealed.

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**SCHEDULES**

**FIRST SCHEDULE  
SECURITIES TRANSFER**

**Section 2**

*Part 1*

Identification No. (For stock exchange use only.)

<b>PARTICULARS OF SECURITIES TRANSFERRED</b>		Stamp of Transferor's Agent
FULL NAME OF ISSUER OF SECURITIES		
FULL DESCRIPTION OF SECURITIES		
NUMBER OR AMOUNT OF SECURITIES	Figures:  Words:	
		Date affixed

<b>PARTICULARS OF REGISTERED HOLDER/S OF SECURITIES</b>			
FULL NAME/S AND DESCRIPTION/S OF REGISTERED HOLDER/S <i>Show Mr, Mrs, etc.</i>	Forenames	Surname	Description
	1.		
	2.		
	3.		
	4.		
RECORDED ADDRESS			
<i>If the transfer is executed by a person (persons) other than the owner(s) insert full name(s) and capacity of the person(s) executing the transfer:</i>			

I/We hereby transfer the securities described above to the person(s) named below or the persons named in the brokers transfers relating to the securities described above.

<b>SIGNATURES OF TRANSFEROR/S AND DATE AND PLACE OF SIGNING</b>					
1.	Signature Place*	/ / Date	2.	Signature Place*	/ / Date
3.	Signature Place*	/ / Date	4.	Signature Place*	/ / Date
LEAVE BLANK FOR REGISTRAR					

\* Transfer must be signed in New Zealand.

*Securities Transfer*FIRST SCHEDULE—*continued*  
SECURITIES TRANSFER—*continued**Part 2*

PARTICULARS OF TRANSFEREE/S OF SECURITIES			
FULL NAME/S AND DESCRIPTION/S OF TRANSFEREE/S <i>Show Mr, Mrs, etc.</i>	Forenames	Surname	Description
	1.		
	2.		
	3.		
	4.		
FULL POSTAL ADDRESS TO BE RECORDED ON REGISTER			
	Postal Zone:		
CONSIDERATION	Figures		
	Words		
I/We confirm that the securities described above have been acquired in an authorised transaction (as defined in the Securities Transfer Act 1991) and I/We request that such entries be made in the register as are necessary to give effect to this transfer.			

Stamp of Transferee's Agent
Date affixed

SECOND SCHEDULE  
BROKERS TRANSFER

Section 2

PARTICULARS OF SECURITIES TRANSFERRED		Securities Transfer Form Identification No.: <i>(For stock exchange use only.)</i>
FULL NAME OF ISSUER OF SECURITIES		
FULL DESCRIPTION OF SECURITIES		
NUMBER OR AMOUNT OF SECURITIES	Figures:	
	Words:	
CONSIDERATION	Figures:	
	Words:	

PARTICULARS OF REGISTERED HOLDER/S OF SECURITIES				
FULL NAME/S AND DESCRIPTION/S OF REGISTERED HOLDER/S <i>Show Mr, Mrs, etc.</i>	Forenames	Surname	Description	
	1.			
	2.			
	3.			
	4.			
RECORDED ADDRESS				

LEAVE BLANK FOR REGISTRAR	
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SECOND SCHEDULE—*continued*BROKERS TRANSFER—*continued*

PARTICULARS OF TRANSFEREE/S OF SECURITIES				
FULL NAME/S AND DESCRIPTION/S OF TRANSFEREE/S <i>Show Mr, Mrs, etc.</i>	Forenames	Surname	Description	
	1.			
	2.			
	3.			
	4.			
FULL POSTAL ADDRESS TO BE RECORDED ON REGISTER				
	Postal Zone:			

I/We confirm that the securities described above have been acquired in a stock exchange transaction (as defined in the Securities Transfer Act 1991) and I/We request that such entries be made in the register as are necessary to give effect to this transfer.

Stamp of Buying Agent
Date affixed

## Section 11

## THIRD SCHEDULE

## ENACTMENTS REPEALED

- 1971, No. 51—The Stamp and Cheque Duties Act 1971: So much of the First Schedule as relates to the Securities Transfer Act 1977. (R.S. Vol. 23, p. 771.)
- 1977, No. 20—The Securities Transfer Act 1977. (R.S. Vol. 15, p. 605.)
- 1987, No. 155—The Securities Transfer Amendment Act 1987.