

# COMPANIES AMENDMENT BILL

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## EXPLANATORY NOTE

THIS Bill amends the Companies Act 1955.

*Clause 1* relates to the Short Title.

## PART I

### FLAT AND OFFICE OWNING COMPANIES

This Part provides a procedure for the registration under the Land Transfer Act 1952 of licences to occupy flats or offices granted by a flat or office owning company to its shareholders pursuant to a provision in the articles whereby the holder of specified shares in the company is entitled to occupy or use a specified flat or office forming part of a building owned by the company. The term "office" (as defined in *clause 2*) is given an extended meaning, and includes any premises used or intended to be used for commercial, industrial, business, or professional purposes.

This Part will provide a form of title for an "own your own" flat against which transfers and mortgages of and other dealings with such licences or licences to occupy "own your own" offices (as so defined) may be registered.

*Clause 2* is an interpretation clause.

*Clause 3* provides that a licence to occupy a residential flat or office granted to a shareholder by a flat or office owning company may be registered under the Land Transfer Act 1952 by constituting the licence a folium of the register book. On such registration the provisions of that Act relating to leases will apply to the licence as if it were a lease.

*Clause 4* enables the District Land Registrar on an application for the registration of a licence to require the deposit of a plan sufficient to identify the flat or office, and any garage, outbuilding, stairways, passages, and other appurtenances and conveniences that the licensee is entitled to use under the licence.

*Clause 5* provides that when a licence has been registered, instruments that could be registered against a lease may be registered against the licence.

*Clause 6* defines the effect of registration. The clause provides that registration will not give the licence any greater operation or effect than it would have without registration, but otherwise the estate of the registered proprietor of the licence is declared to be paramount. The estates of other persons having registered interests in the licence are likewise protected.

*Clause 7* provides that on the registration of a mortgage of a registered licence the relative share certificate of the licensee is to be produced to the District Land Registrar, who is to make an entry thereon that the licence is mortgaged, and is to notify the company of the registration of the mortgage. The company is to record particulars of the mortgage in its office copy of the share certificate and of the licence and in its register of members.

*Clause 8* declares that the first mortgagee of a registered licence is entitled to the custody of the licence and relative share certificate.

*Clause 9* provides that the licensee under a licence that is subject to a registered mortgage may not sell or otherwise dispose of the licence or any of his relative shares without the consent of the mortgagee. That consent will not be necessary if the mortgage expressly provides that no such consent is necessary, or if the person acquiring the licence continues to hold it subject to the mortgage, or, where the company cancels or accepts a surrender of the licence and issues a new licence to the person acquiring the licence, the new licensee requests the District Land Registrar to record the mortgage against the new licence.

*Clause 10* imposes restrictions on the power of the company to cancel a licence that is subject to a registered mortgage. Unless the mortgagee consents to the cancellation or the licence is to be cancelled in order to enable a new licence to be issued that will be subject to the mortgage, the company may not cancel the licence or forfeit any of the relative shares of the licensee unless it gives notice of its intention to the mortgagee setting out the matters to be remedied within a specified time in order to avoid the cancellation and those matters are not remedied within the time specified.

*Clause 11* provides for the registration of the cancellation of a registered licence.

*Clause 12* sets out the procedure for the bringing down on a new licence of mortgages to which a cancelled or surrendered licence was subject.

*Clause 13: Subclause (1)* provides that the District Land Registrar shall not register a transfer of a registered licence unless he is satisfied that the transferee has been registered as the holder of the relative shares.

*Subclause (2)* provides that the District Land Registrar shall not register a new licence in place of any other registered licence, unless the former licence has been cancelled, revoked, rescinded, or surrendered, and the cancellation, revocation, rescission, or surrender has been duly registered.

*Clause 14* provides that where a mortgagee of a registered licence exercises his power of sale under the mortgage on default by the licensee, he will also be entitled, as if he were the attorney of the licensee, to execute a transfer to himself (if he buys in at the sale) or to the purchaser of the relative shares of the licensee. Subject to any provision in the articles of association of the company requiring the consent of the directors or of the company to the transfer of the shares, the company must register the transfer. That consent may not be unreasonably withheld.

*Clause 15* provides that where a mortgage of land of a flat or office owning company is discharged and a new mortgage is registered for an amount not exceeding the amount secured by the discharged mortgage and containing a statement that the money advanced under the new mortgage was used for the purpose of repaying the money secured by the discharged mortgage, the new mortgage will have the same priority as the discharged mortgage in relation to registered licences affecting the land. This will enable a company which has borrowed money on the security of its land (the mortgage having priority over licences subsequently granted) to refinance when the mortgage becomes due, by giving the new mortgagee the same priority in relation to those licences as was enjoyed by the former mortgagee.

*Clause 16* prescribes the manner in which notices are to be served for the purposes of this Part.

## PART II

### AMENDMENT OF PRINCIPAL ACT

*Clause 17:* Section 86 of the principal Act enables shares or debentures of a deceased shareholder or debenture holder to be vested in the person entitled thereto without the necessity of probate or letters of administration being taken out, if the total amount paid up on the shares or owing under the debentures does not exceed £200. This clause increases that amount to £500.

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## PART I

## FLAT AND OFFICE OWNING COMPANIES

2. **Interpretation**—(1) In this Part of this Act, unless the context otherwise requires,—

“Company”, in relation to any licence, means the 5  
company by which the licence was issued:

“Flat or office owning company” means a company the  
articles of which provide that the registered holder  
of specified shares in the company is entitled, by  
virtue of being the holder of those shares, to occupy 10  
or use a specified residential flat or office forming part  
of a building owned by the company:

“Licence to occupy” or “licence” means any instrument  
(not being an instrument registrable under the Land  
Transfer Act 1952 otherwise than pursuant to this 15  
Act), whether issued before or after the passing of  
this Act, which—

(a) Is executed by a flat or office owning company  
under its common seal and by a member of the 20  
company; and

(b) Grants to that member the right to occupy or  
use a specified residential flat or office forming part  
of a building owned by the company pursuant to a  
provision in the articles of the company entitling him  
as the registered holder of specified shares in the com- 25  
pany to that occupation or use (whether or not the  
licence also grants to him any right of user of any  
garage, outbuilding, or other structure, or of any  
passages, stairways, or other appurtenances, services,  
or conveniences of the building of which the flat or 30  
office forms part, or of the land appurtenant to that  
building);—

and “licensee” has a corresponding meaning:

“Office” includes premises used or intended to be used for  
commercial, industrial, business, or professional 35  
purposes:

“Registered”, in relation to any licence or to a mortgage  
of or other dealing with any licence, means registered  
under the Land Transfer Act 1952 pursuant to the  
provisions of this Part of this Act; and “registration” 40  
has a corresponding meaning:

“Relative shares of the licensee”, in relation to any licence, means the shares the ownership of which, pursuant to the articles of the company, entitles the licensee to the licence:

5 “Share certificate”, in relation to the relative shares of the licensee, means the certificate issued in respect of those shares under section 90 of the principal Act.

(2) Every licence to occupy shall be deemed to be a lease for the purposes of subsection (3) of section 350 of the  
10 Municipal Corporations Act 1954 (as added by subsection (2) of section 3 of the Municipal Corporations Amendment Act 1958) and of subsection (5) of section 21 of the Counties Amendment Act 1961.

**3. Registration of licence to occupy**—(1) Notwithstanding  
15 anything in the Land Transfer Act 1952, a licence to occupy may be registered under that Act, with any necessary modifications, by constituting it a folium of the register book kept by the District Land Registrar; and the same registration fee shall be payable in respect thereof as on a memorandum of  
20 lease.

(2) Subject to the provisions of this Part of this Act, all the provisions of the Land Transfer Act 1952 relating to leases, as far as they are applicable and with the necessary modifications, shall apply with respect to a licence registered under  
25 this section as if it were a lease.

(3) Where any licence is presented to the District Land Registrar for registration, and the District Land Registrar is satisfied that for the purposes of section 36 of the Land Transfer Act 1952 no duplicate of the licence is in existence  
30 or can reasonably be obtained, he may accept as a duplicate of the licence a copy of the licence duly authenticated to his satisfaction as a true copy, and every such authenticated copy shall, for the purposes of Part III of that Act, be deemed to be a duplicate of the licence, and shall be the  
35 copy to be constituted a folium of the register book pursuant to this section.

**4. District Land Registrar may require plan**—Without limiting the powers conferred on the District Land Registrar by section 167 of the Land Transfer Act 1952, where applica-  
40 tion is made to the District Land Registrar for registration of

a licence, he may require the applicant to deposit in the Land Registry Office of the district, or cause to be endorsed on or attached to the licence, a plan, authenticated as required by the District Land Registrar, sufficient to identify—

- (a) The flat or office comprised in the licence in relation to the land in the certificate of title and to the building of which the flat or office forms part, and, if the District Land Registrar thinks fit, in relation to other flats or offices; and 5
- (b) Every garage, outbuilding, other structure, passage, stairway, or other appurtenance or convenience of the building of which the office or flat forms part in respect of which the licensee has a right of user, and also any land of which the licensee has a right of user and which is appurtenant to that building. 10 15

**5. Registration of instruments against licence**—Where any licence to occupy has been registered pursuant to this Part of this Act, any instrument within the meaning of the Land Transfer Act 1952 which could be registered under that Act against a registered lease of land may be registered against the licence in the same manner as an instrument may be registered against a lease of land: 20

Provided that it shall not be necessary to record any such instrument against the register constituted by any relative instrument of title in the name of the company or in the name of any person through or under whom the company obtained its instrument of title. 25

**6. Effect of registration of licence**—Subject to the provisions of this Part of this Act, registration of a licence shall not give the licence any greater operation or effect than it would have without registration, but otherwise every registered licence shall be an interest within the meaning of section 62 of the Land Transfer Act 1952 suitably modified, and every entry made thereon, if purporting to be duly made and signed, shall be received in all Courts of law and equity as evidence of the particulars therein set forth and shall, as against the person named in the original licence and all persons claiming through, under, or in trust for him, be conclusive evidence that the person named in that entry is seised or possessed of the estate or interest of which he is expressed to be the registered proprietor. 30 35 40

**7. Mortgage of licence—**(1) Upon the registration of a mortgage of any registered licence, every share certificate issued by the company in respect of the relative shares of the licensee shall be produced to the District Land Registrar, who shall make an entry thereon that the licence is subject to the mortgage. On the registration of a discharge of the mortgage, the District Land Registrar shall, when the share certificate is produced to him for the purpose, cancel that entry.

(2) The District Land Registrar shall, in writing, notify the company of the registration of a mortgage of any licence giving all necessary particulars, including the name, occupation, and address of the mortgagee, and of the registration of a discharge of any such mortgage.

(3) On receipt of a notice under subsection (2) of this section, the company shall record the particulars of the mortgage or of the discharge, as the case may be, on any office copy of the share certificate and of the licence held by the company, and shall in its register of members against the entry relating to the licensee record the fact that the licence has been mortgaged, together with the registered number of the mortgage, or, as the case may be, that the mortgage has been discharged.

(4) Where a company issues any new share certificate to replace a lost or defaced certificate on which particulars of any mortgage had been recorded, it shall be the duty of the company to enter a like record in respect of the new certificate.

(5) If any company makes default in complying with any of the requirements of subsection (3) or subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

**8. Mortgagee to have custody of licence and share certificate—**The mortgagee, or first mortgagee for the time being, of any registered licence shall be entitled to the possession of the licensee's copy of the licence and of the share certificate issued in respect of the relative shares of the licensee.

**9. Consent of mortgagee required on disposal of licence or shares—**(1) The licensee under a licence that is subject to a registered mortgage shall not sell or otherwise dispose of the licence or the relative shares of the licensee or any of them without the consent in writing of the mortgagee of the licence :

Provided that, subject to any provision of the mortgage requiring the consent of the mortgagee to the sale or other disposition of the licence or of any relative shares of the licensee, the consent of the mortgagee shall not be required under this subsection in any case where—

(a) The mortgage expressly provides that no such consent is necessary; or

(b) The person acquiring the interest of the licensee continues to hold that interest under the existing licence subject to the mortgage; or

(c) The company cancels, revokes, rescinds, or accepts a surrender of the existing licence and issues in its place a new licence in the name of the person acquiring the interest of the licensee and that person requests the District Land Registrar, in writing, to record the mortgage against the new licence under section 12 of this Act.

(2) Where a licence is subject to a registered mortgage, the company and the directors of the company shall not register a transfer or other disposition of the relative shares of the licensee or any of them, unless and until—

(a) Any consent of the mortgagee required by subsection (1) of this section has been endorsed on or attached to the instrument of transfer or other disposition; or

(b) The request referred to in paragraph (c) of the proviso to that subsection has been deposited with the company for delivery to the Registrar pursuant to paragraph (c) of subsection (2) of section 11 of this Act.

(3) Unless such of the requirements of this section as are applicable are complied with, no transfer or other disposition of a licence or of the relative shares of a licensee or any of them and no new licence issued in the place of a cancelled, revoked, rescinded, or surrendered licence shall have any force or effect.

**10. Restrictions on cancellation, etc., of licence**—Where a licence is subject to a registered mortgage, then, except with the consent of the mortgagee or, in any case to which section 9 of this Act applies, unless such of the provisions of that section as are applicable have been complied with, the company shall not cancel, revoke, rescind, accept the surrender of, or issue a new licence in place of that licence or forfeit the relative shares of the licensee or any of them, unless—

- (a) Notice in writing is given by the company to the mortgagee specifying the matters required to be remedied in order to avoid the cancellation, revocation, rescission, acceptance of surrender, forfeiture, or issue of a new licence, and allowing a reasonable time, specified in the notice, for those matters to be remedied; and
- (b) Those matters have not been remedied within the time specified in the notice.

10 **11. Registration of cancellation, etc., of licence—**(1) Where the company cancels, revokes, rescinds, or accepts the surrender of a registered licence, the company shall—

- 15 (a) If the company is able to obtain production of the licensee's copy of the licence for the purpose, endorse thereon or attach thereto a memorandum under the seal of the company of the cancellation, revocation, rescission, or acceptance of surrender and forward it to the District Land Registrar, together, in the case of a surrender, with the instrument of surrender duly executed by the company and by the licensee:
- 20 (b) If the company is unable to obtain production of the licensee's copy of the licence for that purpose, notify the District Land Registrar, by notice in writing under the seal of the company, of the cancellation, revocation, rescission, or acceptance of surrender and of the grounds thereof, together, in the case of a surrender, with the instrument of surrender duly executed by the company and by the licensee.

30 (2) Where the company cancels, revokes, rescinds, or accepts the surrender of a licence that is subject to a registered mortgage, the company shall also forward to the District Land Registrar together with the licence or notice, as the case may be, forwarded under subsection (1) of this

- 35 section—
- (a) A copy of the mortgagee's consent certified as a true copy under the seal of the company; or
- (b) A certificate under the seal of the company that the notice required by section 10 of this Act to be given to the mortgagee has been duly given and that the matters specified in the notice have not been remedied within the time specified therein;
- 40 or

(c) The request deposited with the company pursuant to paragraph (c) of the proviso to subsection (1) of section 9 of this Act.

(3) The District Land Registrar, on receipt of the licence or notice forwarded in accordance with paragraph (a) or paragraph (b) of subsection (1) of this section and, where necessary, on compliance by the company with subsection (2) of this section, shall, without fee, register the cancellation or revocation or rescission or surrender of the licence. 5

(4) No cancellation, revocation, rescission, or surrender to which this section applies shall have any force or effect until it has been registered under subsection (3) of this section. 10

(5) If any company makes default in complying with any of the requirements of subsection (1) or subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine. 15

## 12. Bringing down of mortgage on new licence—

(1) Where—

- (a) A licence is subject to a registered mortgage; and
- (b) The licensee transfers or otherwise disposes of the relative shares of the licensee; and 20
- (c) The company, in consequence of the transfer or disposition, cancels or revokes or rescinds or accepts a surrender of the licence and issues a new licence for the same flat or office to the person acquiring those shares,— 25

the licensee under the new licence may, upon applying for registration thereof or for the registration of the cancellation, revocation, rescission, or surrender of the former licence, request the District Land Registrar, in writing, to record against the new licence the mortgage registered against the former licence or, if there are more mortgages than one, such of them as he specifies. 30

(2) Upon registration of the new licence the District Land Registrar shall record against it the mortgage or mortgages specified in the request in the order of their registered priority, and thereupon the new licence shall be deemed to be subject to the mortgage or mortgages accordingly, and the provisions of section 104 of the Property Law Act 1952 shall apply as if the licensee had acquired his licence by conveyance or transfer subject to the mortgage or mortgages so recorded. 40

(3) Where any mortgage or mortgages are recorded against a new licence pursuant to this section, all references in any such mortgage to the licence or to the estate or interest of the licensee thereunder shall be deemed to be references to the  
5 new licence or, as the case may be, to the estate or interest of the licensee thereunder.

**13. Registration of transfer of licence or new licence—**

(1) The District Land Registrar shall refuse to register any memorandum of transfer of a registered licence, unless and  
10 until he is satisfied that an instrument disposing of the relative shares of the licensee to the person acquiring the licence under the memorandum of transfer has been registered by the company or its directors.

(2) The District Land Registrar shall refuse to register  
15 any licence issued by a company in the place of any other licence registered in his office, unless and until that other licence has been cancelled, revoked, rescinded, or surrendered and the cancellation, revocation, rescission, or surrender has been registered under subsection (3) of section 11 of this Act.

**20 14. Transfer of shares on exercise of power of sale by mortgage of licence—**

Where a registered licence is subject to a registered mortgage, and in exercise of the power of sale contained or implied in the mortgage the licence is transferred to the mortgagee or to some other person, the mortgagee shall  
25 be entitled to execute a transfer to himself or, as the case may be, to that other person of the relative shares of the licensee as if he had been duly appointed to be the attorney of the licensee for that purpose by an irrevocable power of attorney, and, on the presentation to it of a transfer of those  
30 shares duly executed pursuant to this section and otherwise in due form, the company shall, subject to any provision in its articles requiring the approval of the directors or of the company to the transfer, register the transfer accordingly:

35 Provided that such approval shall not be unreasonably withheld.

**15. Priority of replacement mortgage over land of company—**Where—

(a) Any mortgage registered under the Land Transfer Act 1952 against any land of a flat or office owning  
40 company is discharged; and

- (b) A new mortgage is registered against the land to secure (whether to the same mortgagee or not) an amount not exceeding the amount secured by the discharged mortgage immediately before it was discharged; and
- (c) The new mortgage contains a statement to the effect that it is in replacement of the discharged mortgage and that the money advanced thereunder was used for the purpose of repaying the money previously secured by the discharged mortgage,—
- the new mortgage shall have the same priority in relation to registered licences affecting the land or any part thereof as was enjoyed by the discharged mortgage immediately before it was discharged.

**16. Service of notices**—(1) Any notice required by this Part of this Act to be given to any person may be given by delivering it to him personally or by sending it to him by registered post addressed to him at his last known place of abode or business in New Zealand. A notice so posted shall be deemed to have been given at the time when the registered letter would in the ordinary course of post be delivered.

(2) Without limiting the provisions of subsection (1) of this section, where any notice is sent by registered post, the production of a receipt given to an officer of the Post Office, and purporting to be signed by the person to whom it is addressed or by his authorised agent, shall be sufficient proof of its receipt by the person to whom it is addressed.

## PART II

### AMENDMENT OF PRINCIPAL ACT

**17. Vesting shares or debentures without requiring probate or letters of administration**—Section 86 of the principal Act is hereby amended by omitting from subsection (1) the words “two hundred pounds” wherever they occur, and substituting in each case the words “five hundred pounds”.