

SECURITIES TRANSFER BILL

EXPLANATORY NOTE

THIS Bill re-enacts the Securities Transfer Act 1977 and extends its application to systems for the electronic transfer of securities. The Securities Transfer Act 1977 authorises the transfer of securities, in the case of certain transactions termed “authorised transactions”, by means of a securities transfer and, in the case of stock exchange transactions, by means of a securities transfer together with a brokers transfer.

The Bill continues the existing authorisation for both these forms of transfer and, in addition, authorises the transfer of securities in accordance with a system of transfer that is wholly or partly electronic approved by the Governor-General by Order in Council.

Clause 1 relates to the Short Title.

Clause 2 which re-enacts, with minor amendments, section 2 of the present Act, defines terms used in the Bill.

Clause 3, which re-enacts section 3 of the present Act, authorises the transfer of securities sold, given, or otherwise disposed of in an authorised transaction (as that term is defined) by means of a securities transfer.

Clause 4, which re-enacts section 4 of the present Act, authorises the transfer of securities sold, given, or otherwise disposed of in a stock exchange transaction (as that term is defined) by means of a securities transfer and a brokers transfer.

Clause 5, which re-enacts section 5 of the present Act, provides that a securities transfer need not be witnessed.

Clause 6 re-enacts, with amendments, section 6 of the present Act and provides that, for the purposes of any enactment, memorandum or articles of association, deed, or agreement,—

- (a) A securities transfer shall be an instrument (or memorandum) of transfer of the securities specified in it:
- (b) A securities transfer and a brokers transfer shall together be an instrument (or memorandum) of transfer of the securities specified in both transfers.

Clause 7 authorises the transfer of securities in accordance with a system of transfer approved by the Governor-General by Order in Council.

The clause empowers the Governor-General, on the advice of the Minister of Justice given in accordance with a recommendation of the Securities

Commission, to approve a system for the transfer of securities that is wholly or partly electronic. Before making a recommendation the Commission must consult with persons and organisations that the Commission considers will be substantially affected by the Order in Council, afford such persons and organisations an opportunity to comment to the Commission, and consider any comments made by them.

Clause 8, which re-enacts section 7 of the present Act, provides that where securities have been transferred under the Bill, registration of the transfer cannot be refused on the ground that the securities have been transferred in that way or on the ground that they have not been transferred by other means.

Clause 9 re-enacts, with amendments, section 8 of the existing Act and provides that the transfer of securities under the Bill shall have effect notwithstanding anything to the contrary in any enactment, rule of law, memorandum or articles of association, deed, or agreement.

Clause 10, which re-enacts section 9 of the present Act, empowers the Governor-General, by Order in Council, to alter the forms of securities transfer and brokers transfer set out in the First and Second Schedules to the Bill.

Clause 11 effects consequential repeals.

Hon. D. A. M. Graham

SECURITIES TRANSFER

ANALYSIS

Title	6. Securities and brokers transfers to be instruments of transfer for the purposes of other Acts, etc.
1. Short Title	7. Transfer of securities by electronic means
2. Interpretation	8. Registration may not be refused on ground that securities have been transferred under this Act
3. Transfer of securities by securities transfer	9. Effect of this Act on other Acts, etc.
4. Transfer of securities by securities transfer and brokers transfer	10. Power to alter forms
5. Attestation of securities transfer unnecessary	11. Repeals Schedules

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 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:

15 “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,—
(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
- (c) A chartered accountant in public practice (as defined in section 2 of the New Zealand Society of Accountants Act 1958); or 5
- (d) A trustee corporation (as defined in section 2 of the Trustee Act 1956); or
- (e) A registered bank (as defined in section 2 of the Reserve Bank of New Zealand Act 1989); or 10
- (f) An authorised public securities dealer—
acting in the ordinary course of business as such:
- “Brokers transfer” means a document in, or to the effect of, the form set out in the Second Schedule to this Act: 15
- “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: 20
- “Company limited by guarantee” has the meaning assigned to it by section 13 (2) (b) of the Companies Act 1955:
- “Debenture stock” includes debentures that form part of a series of debentures secured by charges of equal priority: 25
- “Flat or office owning company” has the same meaning as in section 2 (1) of the Companies Amendment Act 1964:
- “Minister” means the Minister of Justice: 30
- “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: 35
- “Securities” means—
- (a) Shares, debenture stock, bonds, or notes, issued by a company; or
- (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 40
- (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 45

(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:

“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):

“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:

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

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

3. Transfer of securities by securities transfer—

Securities (as defined in section 2 of this Act) sold, given, or otherwise disposed of in an authorised transaction may 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:

(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 be transferred by means of—

(a) A securities transfer that complies with all the following requirements:

(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):

(iii) The transfer specifies securities that include the securities sold;—

together with—

(b) A duly completed brokers transfer that specifies the securities sold.

Cf. 1977, No. 20, s. 4

5. Attestation of securities transfer unnecessary— 10

(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. 15

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,— 20

(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: 25

(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. 30

(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.

Cf. 1977, No. 20, s. 6 (1) 35

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. 40

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

5 (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

10 (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.

15 (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.

20 **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
25 transferred by other means.

(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

30 **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.

35 (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).

(3) Nothing in this Act shall in any way derogate from section 45c (3) of the Reserve Bank of New Zealand Act 1964 (as
40 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.

(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:

(c) Section 451 of the Reserve Bank of New Zealand Act 1964 5
(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. 10

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

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. 15

(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. 20

(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— 25
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 30
to this Act are hereby repealed.

SCHEDULES

**FIRST SCHEDULE
SECURITIES TRANSFER**

Section 2

Part 1

Identification No. (For stock exchange use only.)

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

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			
<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.

SIGNATURES OF TRANSFEROR/S AND DATE AND PLACE OF SIGNING							
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.	
FULL POSTAL ADDRESS TO BE RECORDED ON REGISTER	4.	
	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	
------------------------------------	--

*Securities Transfer*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.