

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 6 December 1995.

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.

Pauline Gardiner

TOWER CORPORATION AMENDMENT

[PRIVATE]

ANALYSIS

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A BILL INTITULED

An Act to amend the Tower Corporation Act 1990

WHEREAS—

5 (A) Tower Corporation is a body corporate consisting of its members and is constituted by the Tower Corporation Act 1990:

(B) Section 11 of the Tower Corporation Act 1990 requires the Corporation to send to every member of the Corporation, not less than 14 days before the annual general meeting of the

No. 61—2

Price Code: J

Corporation, an abstract of the annual accounts of the Corporation, a report of the actuary to the Corporation or a summary of the report, and a statement of policyholders' funds and also requires those documents to be accompanied by a statement that each member is entitled to obtain on request and free of charge a copy of the annual accounts of the Corporation and the auditor's report on those accounts: 5

(C) The Corporation wishes to limit the requirement imposed by section 11 of the Tower Corporation Act 1990 so that it need send the documents referred to in that section only to those members enrolled on a sub-register maintained by the Corporation and who have elected to receive those documents: 10

(D) It is necessary to amend certain provisions of the Tower Corporation Act 1990 as a consequence of the enactment of the Companies Amendment Act 1993 and the Companies Act 1993: 15

(E) The objects of this Act cannot be attained otherwise than by legislation:

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows: 20

1. Short Title—This Act may be cited as the Tower Corporation Amendment Act 1994, and shall be read together with and deemed part of the Tower Corporation Act 1990* (hereinafter referred to as the principal Act). 25

2. Interpretation—Section 2 of the principal Act is hereby amended by omitting from the definition of the term “scheme for conversion” the words “public company limited by shares under the Companies Act 1955”, and substituting the words “company limited by shares under the Companies Act 1993”. 30

New

2A. Tower Corporation—Section 4 (2) of the principal Act is hereby amended by omitting the words “and a common seal”.

2B. Protection of name—Section 5 of the principal Act is hereby amended by adding the following subsection: 35

New

(3) This section shall expire on the close of the 31st day of December 1997.”

5 **3. Application of Companies Act 1955**—(1) Section 9 (1) of the principal Act is hereby amended by repealing paragraph (c).

New

(2) Section 9 of the principal Act is hereby amended by adding the following subsection:

10 “(4) This Part of this Act has effect notwithstanding the repeal of the Companies Act 1955 by the Companies Act Repeal Act 1993.”

15 **4. Rights of classes of members**—Section 10 of the principal Act is hereby amended by omitting the words “sections 205 and 206”, and substituting the words (“*section 209R*”) “sections 209R and 209s”.

5. New sections substituted—The principal Act is hereby amended by repealing section 11, and substituting the following sections:

20 “**11. Corporation to provide abstract of accounts to certain members**—(1) The Corporation shall, in addition to complying with section 18 of the Financial Reporting Act 1993, deliver to the Registrar, and send to every member of the Corporation who is enrolled on the sub-register established
25 under **section 11A** of this Act at the address of the member recorded on the sub-register, not less than 14 days before the annual general meeting of the Corporation, the following documents:

“(a) An abstract of the annual accounts:

30 “(b) The report of the actuary or a summary of it:

“(c) A statement of the policyholders’ funds.

“(2) The documents shall be accompanied by a statement that any such member is entitled to obtain on request and free of charge a copy of the annual accounts and the auditor’s
35 report.

“11A. **Sub-register of members**—(1) The Corporation shall establish and maintain a sub-register of members who elect to be enrolled on the sub-register for the purpose of receiving the documents referred to in **section 11 (1)** of this Act.

“(2) The Corporation shall, by notice in writing, require each member to elect whether or not that member wishes to be enrolled on the sub-register. 5

“(3) Every notice under **subsection (2)** of this section must—

“(a) Explain the effect of enrolment on the sub-register; and

“(b) State that, unless the member elects to be enrolled on the sub-register by the date specified in the notice, not being a date less than 30 days after the date on which the notice was posted to the member, the member will not be enrolled on the sub-register. 10

“(4) The Corporation shall enter on the sub-register the name of every member who elects, within the time specified in the notice referred to in **subsection (3) (b)** of this section, to be enrolled on the sub-register. 15

“(5) The Corporation may from time to time, by notice in writing to any member who is enrolled on the sub-register, require that member to elect whether or not that member wishes to continue to be enrolled on the sub-register. 20

“(6) Every notice under **subsection (5)** of this section must—

“(a) Explain the effect of continuing to be enrolled on the sub-register; and 25

“(b) State that, unless the member elects to continue to be enrolled on the sub-register by the date specified in the notice, not being a date less than 30 days after the date on which the notice was posted to the member, the name of the member will be removed from the sub-register. 30

“(7) The Corporation shall remove from the sub-register the name of any member who—

“(a) Elects not to continue to be enrolled on the sub-register; or 35

“(b) Does not elect, within the time specified in the notice referred to in **subsection (6) (b)** of this section, to continue to be enrolled on the sub-register.

“(8) **Subsection (7)** of this section shall apply notwithstanding that the Corporation may be aware that the member has not received the notice referred to in **subsection (6)** of this section. 40

“(9) Notwithstanding **subsections (2)** and **(5)** of this section, any member may make written application to the Corporation to have his or her name entered on the sub-register and the

Corporation shall, on receipt of the application, enter the name of that member on the sub-register.

“(10) The Corporation may remove the name of a person from the sub-register if—

5 “(a) The person has ceased to be a member of the Corporation; or

 “(b) The person gives the Corporation a written request to remove his or her name from the sub-register.”

10 **6. Members liability**—Section 14 (1) of the principal Act is hereby amended by—

 (a) Omitting the words “wound up”, and substituting the words “put into liquidation”; and

 (b) Omitting from paragraph (a) the words “winding up”, and substituting the word “liquidation”.

15 **7. Scheme for conversion**—(1) Section 15 (1) of the principal Act is hereby amended by omitting the word “public”.

20 (2) Section 15 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

 “(2) Any such scheme for conversion shall—

 “(a) State the name of the proposed company:

 “(b) State the number of shares in the proposed company:

25 “(c) Have annexed to it the proposed constitution of the proposed company, if it is proposed to have one:

 “(d) Specify the persons or classes of persons who will be shareholders in the proposed company:

30 “(e) Specify, in the case of persons or classes of persons who are members of the Corporation and who will be shareholders in the proposed company, by reference to the interests of those persons or classes of persons in the policies of the Corporation, the entitlements of those persons or classes of persons to shares in the proposed company:

35 “(f) Specify, in the case of persons or classes of persons who are members of the Corporation and who will not be shareholders in the proposed company, the rights and liabilities of such persons or classes of persons:

40 “(g) Contain such other matters as the Corporation thinks appropriate or as the High Court directs.”

8. Meeting of members to approve scheme for conversion—(1) Section 17 (3) (c) of the principal Act is hereby amended by omitting the word “, secretary,”.

New

(1A) Section 17 (6) of the principal Act is hereby amended by omitting the words “and includes an accountant, actuary, banker, or valuer;”.

(2) Section 17 (8) of the principal Act is hereby amended by omitting the words “pursuant to section 147 of the Companies Act 1955”.

9. New sections substituted—The principal Act is hereby amended by repealing sections 19 and 20, and substituting the following sections:

“19. Registrar to register Corporation as a company on receipt of certain documents—(1) After the expiration of the period referred to in section 18 (6) of this Act and if the scheme for conversion has been confirmed by the High Court or the Court of Appeal, as the case may be, the Corporation shall deliver to the Registrar the following documents and fee:

“(a) A copy of the scheme for conversion: 20

“(b) A sealed copy of the order of the High Court or Court of Appeal, as the case may be:

“(c) An application for registration under section 12 of the Companies Act 1993:

“(d) Such fee as is payable under regulations made under the Companies Act 1993 on an application to register a company under section 12 of that Act. 25

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“(2) The Registrar, on being satisfied that the documents delivered under subsection (1) of this section are in accordance with that subsection, shall retain and register them and issue a certificate of incorporation for the company. 30

New

“(2) The Registrar, on being satisfied that—

New

5 “(a) The documents delivered under **subsection (1)** of this section are in accordance with that section; and
“(b) Sections 20, 21, and 22 of the Companies Act 1993 have been complied with,—
shall retain and register the documents and issue a certificate of incorporation for the company.”

10 “(3) The certificate of incorporation shall be conclusive evidence that the requirements of this section have been complied with and that the Corporation was, on the date shown in the certificate, duly registered as a company under the Companies Act 1993.

15 “(4) From the commencement of the conversion date the Corporation shall cease to be incorporated under this Act and shall be a company incorporated under Part II of the Companies Act 1993 and that Act (except section 120 (2)) shall apply to it accordingly.

20 “(5) The Registrar shall forthwith publish a notice in the *Gazette* of the registration of the Corporation as a company pursuant to this section.

“20. **Issue of shares**—(1) Upon the registration of the Corporation as a company,—

25 “(a) All persons who are to be shareholders of the company in accordance with the terms of the scheme for conversion shall be shareholders of the company; and

30 “(b) The shares in the company to which all such persons are entitled in accordance with the scheme for conversion shall be deemed to be issued to such persons and shall be deemed to be paid in full; and

“(c) An entry shall be made in the share register of the company in respect of each such person showing—

35 “(i) The name of that person:

“(ii) The address of that person to which notices and other documents are to be sent:

“(iii) The class of share and the number of shares in the company to be held by that person calculated in accordance with the terms of the scheme for conversion.

40 “(2) Where any shares are, pursuant to **subsection (1)** of this section, deemed to have been issued to shareholders of the

company, the company shall deliver to the Registrar, within 30 days of their completion,—

“(a) A list, verified by the statutory declaration of a director, showing—

“(i) The number of shares comprised in the issue: 5

“(ii) The names, addresses, and descriptions of the persons to whom the shares have been issued:

“(iii) The amount credited as having been paid in respect of each share issued:

“(iv) The consideration deemed to have been provided by the persons to whom the shares have been issued for the issue of the shares: 10

“(b) A statutory declaration by a director of the company to the effect that, to the best of his or her knowledge and belief, having made due enquiry,— 15

“(i) The shares deemed to have been issued have been issued in accordance with the scheme for conversion:

“(ii) The consideration deemed to have been provided is not less than the amount by which the shares have been credited as having been paid otherwise than in cash,— 20

and describing the consideration deemed to have been given by the persons to whom the shares have been issued (or, where the effect of the issue of shares is to satisfy the whole or part of a liability of the Corporation or the company, the liability) in sufficient detail to identify it and stating an estimate of its value and how that value was assessed. 25

“(3) Notwithstanding subsection (2) (a) of this section, or section 87 of the Companies Act 1993, the company shall not be required— 30

“(a) To show on the list required to be delivered to the Registrar by subsection (2) (a) of this section; or

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“(b) To enter in the share register referred to in section 87 of the Companies Act 1993— 35

the description of any person who, immediately before the conversion date, was a member of the Corporation if the register of members of the Corporation did not contain a description of that person.” 40

New

9A. Consequential provisions on conversion of Corporation—Section 21 (1) (b) of the principal Act is hereby amended by omitting the word “The”, and substituting the words “Subject to Part IV of the Companies Act 1993, the”.

10. Liability of shareholders of company—The principal Act is hereby amended by repealing section 25, and substituting the following section:

“25. No shares in a company into which the Corporation has become converted pursuant to this Part of this Act that are issued to a person as a member of the Corporation pursuant to a scheme for conversion shall require a contribution from that person to the assets of the company in the event of the company being put into liquidation.”

New

10A. Change of name of Tower Corporation—Section 29 (1) of the principal Act is hereby amended by inserting, after the words “the Companies Act 1955”, the words “or the Companies Act 1993, as the case may be,”.

11. New First Schedule to principal Act—The principal Act is hereby amended by repealing the First Schedule thereto, and substituting the First Schedule set out in the Schedule to this Act.

12. Private Act—This Act is hereby declared to be a private Act.

SCHEDULE

NEW FIRST SCHEDULE TO PRINCIPAL ACT

“FIRST SCHEDULE

PROVISIONS OF COMPANIES ACT 1955 THAT DO NOT APPLY TO CORPORATION

Sections 14, 15, 20, 21, 23 (1) (c), 25, 30, 34, 39 to 41, 162, 223 (1), (2), and (5), 224 to 226.

Parts X and XV (except section 451).

The Third Schedule, Table C.”