

AUSTRALIAN CAPITAL TERRITORY  
MARKETABLE SECURITIES ORDINANCE 1971  
EXPLANATORY MEMORANDUM

The purpose of this Ordinance is to facilitate further the transfer and processing of stock exchange securities.

This Ordinance will replace an existing Ordinance, the Marketable Securities Transfer Ordinance 1967-1969. Similar legislation exists in all the States and the Northern Territory, and is to be replaced by legislation designed to operate uniformly as from 1 July 1971.

The main features of the existing Ordinance are as follows.

- (a) It is part of a uniform scheme to provide simplified forms of transfers of securities when these are effected by brokers of recognised Australian stock exchanges. Under this scheme, reliance is placed upon the stamps of the brokers. The transferee's signature is rendered unnecessary in certain circumstances, and the transferor's broker, when selling the securities to more than one buyer, can 'split' the original transfer by using a separate broker's transfer form for each transferee, thus eliminating the need for separate instruments signed by the transferor.
- (b) The stamping of the instruments by the brokers for the parties to the transaction carries with it certain warranties and indemnities by the brokers that are necessary for the protection of the parties and the company concerned.
- (c) Appropriate forms are prescribed in the schedule to the existing Ordinance. When used in accordance with the provisions of the Ordinance, these are valid instruments of transfer notwithstanding anything to the contrary contained in the memorandum or articles of the company.
- (d) The uniform legislation operates in conjunction with provisions in the stamp duty legislation of the various States and Territories so as to ensure simpler and more appropriate methods of collecting stamp duty on these transactions.

Certain difficulties have been experienced with the existing legislation, and requests have been made for its scope to be extended. Some amendments designed to achieve greater uniformity have also been proposed. In the result, the Standing Committee of Commonwealth and State Attorneys-General recommended that all the existing legislation be repealed and re-enacted in an improved form. This Ordinance follows the Standing Committee's recommendations, and includes the following improvements.

- (a) Problems will be removed as to which (if any) State or Territory's law governs a particular transaction. There will be a uniform provision that while the sufficiency of the form of transfer will be governed by the law of the State or Territory in which the corporation whose shares are being transferred is incorporated, the warranties carried by the stamp of the broker or stock exchange will be governed by the law of the place where the stamp is affixed.
- (b) The legislation is extended to cover transfers from approved trustee corporations to the beneficial owners of securities held by those trustee corporations.
- (c) Stock Exchanges are empowered to expedite onward transfers from an initial purchaser to one or more subsequent buyers, before the registration of the initial purchase, by 'splitting' transfers in the same way as the transferor's broker now can.