

## COMPANIES (LIFE INSURANCE HOLDING COMPANIES)

### No. 23 of 1968

An Ordinance to restrict the number and value of Foreign Shares that may be held in certain Life Insurance Holding Companies incorporated in the Territory.

#### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Companies (Life Insurance Holding Companies) Ordinance 1968*.\* Short title.
2. This Ordinance shall be administered by the Treasurer. Administration.
3. This Ordinance is divided into Parts, as follows:— Parts.
  - Part I.—Preliminary (Sections 1-4).
  - Part II.—Interpretation (Sections 5-9).
  - Part III.—Restriction on the Transfer or Allotment of Foreign Shares in Specified Companies (Sections 10-16).
  - Part IV.—Powers of the Commissioner in relation to Foreign Shares in Specified Companies (Sections 17-21).
  - Part V.—Restriction on Voting Rights in respect of Foreign Shares (Sections 22-25).
  - Part VI.—Disposal of Foreign Shares (Sections 26-31).
  - Part VII.—Miscellaneous (Sections 32-43).
4. This Ordinance is incorporated and shall be read as one with the *Companies Ordinance 1962-1966* and, unless the contrary intention appears, expressions used in this Ordinance have the same meaning as in that Ordinance. Incorporation with Companies Ordinance.

#### PART II.—INTERPRETATION.

5. For the purposes of this Ordinance, each of the following companies, being a company incorporated in the Territory, is a specified company:— Specified companies.
  - (a) The M.L.C. Limited; and
  - (b) A.P.A. Holdings Limited.
- 6.—(1.) In this Ordinance, unless the contrary intention appears— Interpretation.
  - “Australia” includes all the Territories of the Commonwealth not forming part of the Commonwealth;
  - “corporation” includes an association, a partnership or other organization, whether incorporated or not;

\* Made, notified in the *Commonwealth Gazette* and commenced on 19 November 1968.

“foreign corporation” means a corporation—

- (a) in the capital of which shares representing more than twenty per centum of the paid up capital of the corporation are held—
  - (i) by persons (other than corporations) not ordinarily resident either in Australia or New Zealand;
  - (ii) by corporations incorporated, formed or otherwise organised elsewhere than in Australia or New Zealand; or
  - (iii) by persons referred to in sub-paragraph (i) of this paragraph and corporations referred to in the last preceding sub-paragraph; or
- (b) in respect of which—
  - (i) persons (other than corporations) not ordinarily resident either in Australia or New Zealand;
  - (ii) corporations incorporated, formed or otherwise organised elsewhere than in Australia or New Zealand; or
  - (iii) persons referred to in sub-paragraph (i) of this paragraph and corporations referred to in the last preceding sub-paragraph,
 are entitled to exercise, or control the exercise of, the right to cast votes in respect of more than twenty per centum of the total number of votes in respect of all shares issued by the corporation;

“foreign share” means—

- (a) a share in a specified company held in the name, or held in any manner for the use or benefit, of—
  - (i) a person (other than a corporation) who is not ordinarily resident either in Australia or in New Zealand; or
  - (ii) a foreign corporation;
- (b) a share in a specified company held in the name, or held in any manner for the use or benefit, of two or more persons, at least one of whom is—
  - (i) a person (other than a corporation) who is not ordinarily resident either in Australia or in New Zealand; or
  - (ii) a foreign corporation; or
- (c) a share in a specified company the exercise of the right to cast a vote in respect of which is subject to control by—
  - (i) a person (other than a corporation) who is not ordinarily resident either in Australia or in New Zealand; or
  - (ii) a foreign corporation;

“person” includes a corporation;

“the Commissioner” means the Insurance Commissioner appointed under the *Life Insurance Act 1945-1965*.

(2.) In this Ordinance—

- (a) a reference to a share in a specified company or in a corporation other than such a company shall be read as a reference to a share in the capital of the specified company or of the corporation, as the case may be; and
- (b) a reference to a share in a specified company or in a corporation other than such a company shall be read as including a reference to stock into which the share has been converted.

7.—(1.) For the purposes of this Ordinance, a reference to control of the exercise of the right to cast a vote in respect of a share in a specified company, or to control of the exercise of the right to cast a vote in respect of a share in any other corporation, shall be read as including a reference to control of that right that is direct or indirect, including control that is exercisable—

- (a) as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights; or
- (b) by reason of a person being in a position to control a corporation or corporations.

(2.) For the purposes of this Ordinance—

- (a) a person (other than a corporation) shall be deemed to be in a position to control a corporation if he alone owns, or he and a person with whom he is associated together own, shares or other interests representing more than twenty per centum of the paid up capital in that other corporation or he alone is, or he and a person with whom he is associated are together, in a position to control more than twenty per centum of the total of the rights to cast votes in respect of shares in that other corporation;
- (b) a corporation shall be deemed to be in a position to control another corporation if it alone owns, or it and a person with whom it is associated together own, shares or other interests representing more than twenty per centum of the paid up capital in that other corporation or it alone is, or it and a person with whom it is associated are together, in a position to control more than twenty per centum of the total of rights to cast votes in respect of shares in that other corporation;
- (c) a person who is or is to be deemed to be in a position to control a corporation which, or a person who, is or is to be deemed to be in a position to control another corporation shall be deemed for the purposes of this Ordinance to be in a position to control that last-mentioned corporation; and

- (d) a person who is or is to be deemed to be in a position to control a corporation shall be deemed to be in a position to control the exercise of any right of that corporation to cast a vote in respect of a share in another corporation.

(3.) For the purposes of the last preceding sub-section, a person shall be deemed to be associated with another person if—

- (a) one of those persons is a corporation and the other person is an officer of that corporation;
- (b) one person is a partner of the other person; or
- (c) those persons are members of a voting trust and the trust relates to shares in a corporation.

Associated  
shareholders.

8.—(1.) For the purposes of this Ordinance, a shareholder in a specified company shall be deemed to be associated with another shareholder in that specified company if—

- (a) one of those shareholders is a corporation and the other shareholder is an officer of that corporation;
- (b) one shareholder is a partner of the other shareholder;
- (c) one of the shareholders is a corporation and the other shareholder, whether a corporation or not, is in a position to control that corporation;
- (d) both shareholders are corporations and one person, whether a corporation or not, is in a position to exercise control over both of those shareholders;
- (e) both of the shareholders hold foreign shares in the specified company and a person who is in a position to control the exercise of the right to cast votes in respect of any of the foreign shares held by one of those shareholders is also in a position to control the exercise of the right to cast votes in respect of any of the foreign shares held by the other shareholder;
- (f) both of the shareholders hold foreign shares in the specified company and a person who is in a position to control the exercise of the right to cast votes in respect of any of the foreign shares held by one of those shareholders is a partner of a person who is in a position to control the exercise of the right to cast votes in respect of any of the foreign shares held by the other shareholder; or
- (g) both shareholders are members of a voting trust and the trust relates to shares in a specified company.

(2.) Where, by reason of the last preceding sub-section—

- (a) one shareholder in a corporation is to be deemed to be associated with another shareholder in that corporation; and
- (b) another shareholder in that corporation is also to be deemed to be associated with either of the shareholders referred to in the last preceding paragraph,

each of those shareholders and that other shareholder shall, for the purposes of this Ordinance, be deemed to be associated with one another.

9. For the purposes of this Ordinance, where—

- (a) a share in a specified company is held in the name of more than one person; and
- (b) one or more of those persons is—
  - (i) a person (other than a corporation) who is not ordinarily resident either in Australia or in New Zealand; or
  - (ii) a foreign corporation,

Foreign shares held jointly.

that share shall be deemed to be held by each of the joint holders of the share.

**PART III.—RESTRICTION ON THE TRANSFER OR ALLOTMENT OF FOREIGN SHARES IN A SPECIFIED COMPANY.**

10.—(1.) A transfer of shares in a specified company is a transfer to which this Part applies if, on the registration of the transfer of the shares, the shares would be foreign shares and—

Transfers to which this Part applies.

- (a) the sum of the paid up capital represented by all other foreign shares in that specified company and of the paid up capital represented by the shares to be transferred would exceed forty per centum of the total paid up capital of the company; or
- (b) the sum of—
  - (i) the paid up capital represented by all foreign shares held and to be held by the person to whom the shares are to be transferred; and
  - (ii) the paid up capital represented by all foreign shares not held by the person to whom the shares are to be transferred but of which that person is and will be the beneficial owner or one of the beneficial owners,
 would exceed twenty-one per centum of the total paid up capital of the company.

(2.) For the purposes of the application of paragraph (b) of the last preceding sub-section, in relation to a person, where a shareholder is to be deemed to be associated with another shareholder in respect of foreign shares, all foreign shares held by that shareholder and by each other shareholder with whom he is to be deemed to be associated shall be deemed to be held by that first-mentioned shareholder.

(3.) Notwithstanding sub-section (1.) of this section, a transfer of shares in a specified company is not a transfer to which this Part applies if the transfer relates to a sale or other disposal of those shares made before the twenty-third day of September, One thousand nine hundred and sixty-eight.

11.—(1.) Where an application is made to a specified company for the registration of a transfer of shares in that company, the company may refuse to register the transfer unless there has been furnished to the specified company information (whether in the form of a statutory

Specified company may require information from transfer of shares.

declaration or otherwise) establishing, in respect of each of those shares, that, upon the registration of the transfer—

- (a) the share will be held by the person to whom it is to be transferred for his own use or benefit or, if the share will be held for the use or benefit of another person, the name of that other person; and
- (b) control of the exercise of the right to cast a vote in respect of the share to be transferred will not be vested in any other person or, if that control will be vested in another person, the name of the other person in whom control of the exercise of the right to cast a vote in respect of the share will be vested.

(2.) Where it appears to the directors of a specified company, from the information in the possession of the specified company, whether furnished in pursuance of the last preceding sub-section or otherwise, that, upon the registration of a transfer of shares in the specified company, those shares or any of those shares will or may be held for the use or benefit of a person other than the person to whom the shares are to be transferred or that control of the exercise of the rights to cast votes in respect of those shares or any of those shares will or may be vested in another person, the specified company may refuse to register the transfer unless—

- (a) the directors of the specified company are satisfied, after receiving further information relating to the matter, that, upon the registration of the transfer of the shares, none of those shares will be so held or that the exercise of none of those rights will be so vested; or
- (b) information with respect to the trusts, agreements, arrangements, understandings and practices by which the shares or any of them will be held for the use or benefit of that other person or by reason of which control of the right to cast votes in respect of the shares or any of them will be vested in that other person is also furnished to the specified company.

(3.) Where an application is made to a specified company for the registration of a transfer of shares in the specified company, the specified company may require the person to whom the shares are to be transferred to furnish such information as the specified company requires to be furnished to it for the purpose of having determined, in accordance with this Part, the question whether or not the transfer is a transfer to which this Part applies.

**12.** Where it appears to the directors of a specified company, from the information in the possession of the specified company, whether furnished in pursuance of the last preceding section or otherwise, that a transfer for the registration of which an application has been made to the specified company is or may be a transfer to which this Part applies, the specified company shall not register the transfer but shall forthwith refer to the Commissioner the question whether or

Reference of  
transfers to  
the Insurance  
Commissioner.

not the transfer is a transfer to which this Part applies together with a statement setting out all information in the possession of the company relating to that question.

**13.—(1.)** Where a question whether a transfer is a transfer to which this Part applies is referred to the Commissioner, the Commissioner shall forthwith give notice in writing to the person by whom the application for registration has been made that the question has been referred to him for determination and shall, in the notice, specify a time (not being less than seven days or more than fourteen days after the date on which the notice is given) within which the person to whom the notice is given may produce to the Commissioner information that the transfer is not a transfer to which this Part applies.

Commissioner  
to give  
notice of  
reference to  
applicant.

(2.) If—

- (a) no information is produced to the Commissioner within the time specified in the notice or within such further time as the Commissioner, on an application made to him within that first-mentioned time, allows that the transfer is not a transfer to which this Part applies; or
- (b) the information produced to the Commissioner within the time specified in the notice or within such further time as the Commissioner, on an application made to him within that first-mentioned time allows, does not satisfy him that the transfer is not a transfer to which this Part applies,

the Commissioner shall certify in writing that the transfer is a transfer to which this Part applies and the transfer shall, subject to this Ordinance, be deemed to be a transfer to which this Part applies.

(3.) If the information produced to the Commissioner satisfies him that the transfer is not a transfer to which this Part applies, the Commissioner shall certify in writing that the transfer is not a transfer to which this Part applies.

(4.) The Commissioner shall, forthwith after giving a certificate under this section, forward the certificate to the specified company and shall forward a copy of the certificate to the person by whom the application for registration of the transfer was made.

**14.—(1.)** Where the Commissioner has certified in writing that a transfer is a transfer to which this Part applies, the person by whom the application for the registration of the transfer was made may apply to the Commissioner to re-consider, in the light of further information furnished by that person, the question whether or not the transfer is a transfer to which this Part applies.

Re-consider-  
ation by the  
Commissioner.

(2.) If the further information produced to the Commissioner does not satisfy him that the transfer is not a transfer to which this Part applies, the Commissioner shall notify in writing the specified company and the person by whom the application for registration of the transfer is made that he is not so satisfied, but if the further evidence produced to him satisfies the Commissioner that the transfer is not a transfer to

which this Part applies, the Commissioner shall cancel, by instrument in writing, the certificate previously given by him and certify that the transfer is not a transfer to which this Part applies.

(3.) The Commissioner shall, forthwith after making an instrument under the last preceding sub-section, forward the instrument to the specified company and shall forward a copy of the instrument to the person by whom the application for the registration of the transfer was made.

Company guilty of offence if transfer registered.

**15.** Where a specified company has referred to the Commissioner the question whether or not a transfer is a transfer to which this Part applies, the specified company shall not register the transfer unless the Commissioner has certified that the transfer is not a transfer to which this Part applies.

Allotments of shares.

**16.** An application for the allotment of shares in a specified company shall be deemed, for the purposes of this Part, to be an application for registration of a transfer of shares in the specified company and this Part applies to and in relation to such an application as if—

- (a) a reference to an application for the registration of a transfer of shares were a reference to an application for the allotment of shares; and
- (b) a reference to the registration of a transfer of shares were a reference to the allotment of shares.

(2.) A specified company shall not allot any of its shares except to a person who has made an application in writing for the allotment.

#### PART IV.—POWERS OF COMMISSIONER IN RELATION TO FOREIGN SHARES IN SPECIFIED COMPANIES.

Determination by the Commissioner that shares are foreign shares.

**17.—(1.)** If it appears to the directors of a specified company that any shares in the specified company (not being shares in respect of which there is in force a certificate under sub-section (3.) of this section) are or may be foreign shares, the specified company shall refer to the Commissioner the question whether or not those shares are foreign shares and, if they are foreign shares, the question on what date they became foreign shares, together with a statement setting out all information in the possession of the company relating to the questions.

(2.) Where a question is referred to the Commissioner under the last preceding sub-section, the Commissioner shall forthwith give notice in writing to the person in whose name the shares are held that the question has been referred to him and shall, in the notice, specify a time (not being less than seven days or more than fourteen days after the date on which the notice is given) within which the person to whom the notice is given may produce to the Commissioner information that the shares are not foreign shares or evidence with respect to the date on which they became foreign shares.



(3.) If—

- (a) no information in relation to the question whether or not the shares are foreign shares is produced to the Commissioner within the time specified in the notice or within such further time as the Commissioner, either before or after the expiration of the time specified in the notice, allows; or
- (b) the information produced to the Commissioner does not satisfy him that the shares are not foreign shares,

the Commissioner shall certify in writing that the shares are foreign shares and shall specify the number of shares to which the certificate relates, and those shares shall, subject to this Ordinance, be deemed to be foreign shares.

(4.) If the information produced to the Commissioner satisfies him that the shares in question are not foreign shares, the Commissioner shall certify that the shares are not foreign shares and those shares shall not, subject to this Ordinance, be deemed to be foreign shares.

(5.) Where the Commissioner gives a certificate under sub-section (3.) of this section, he shall specify in the certificate the day on which the shares to which the certificate relates are, for the purposes of this Ordinance, to be deemed to have become foreign shares and the shares shall be deemed, for the purposes of this Ordinance, to have become foreign shares on the day so specified.

(6.) The day to be specified for the purpose of the last preceding sub-section is—

- (a) if the Commissioner is satisfied on the information produced to him that, if this Ordinance had been in force on the twenty-second day of September, One thousand nine hundred and sixty-eight, those shares would have been foreign shares on that day—that day;
- (b) if the Commissioner is satisfied on the information produced to him that, if this Ordinance had been in force on that date, the shares would have become foreign shares on a day in the period between that date and the commencement of this Ordinance—the day immediately before the commencement of this Ordinance; or
- (c) if the Commissioner is satisfied on the information produced to him that the shares became foreign shares on or after the commencement of this Ordinance—the day on which the information establishes that the shares became foreign shares or, if the information does not establish with certainty the day on which the shares became foreign shares, the day on which this Ordinance comes into operation.

(7.) The Commissioner shall, forthwith after giving a certificate under this section, forward the certificate to the specified company and shall forward a copy of the certificate to the person in whose name the shares are held.

Determination  
by the  
Commissioner  
that  
shareholders are  
associated  
shareholders.

18.—(1.) If it appears to the directors of a specified company that two or more shareholders who hold foreign shares in the specified company are or may be associated with one another in relation to all or any of the foreign shares held by them, the specified company shall refer to the Commissioner the question whether those shareholders are so associated together with a statement setting out all information in the possession of the company relating to that question.

(2.) Where a question is referred to the Commissioner under the last preceding sub-section, the Commissioner shall forthwith give notice in writing to each of the shareholders referred to by the company as being so associated with one another that the question has been referred to him and shall, in the notice, specify a time (not being less than seven days or more than fourteen days after the date on which the notice is given) within which the persons to whom notice is given may produce to the Commissioner information that they are not so associated with one another.

(3.) If, in relation to any two or more of the shareholders referred to in a notice under sub-section (2.) of this section—

- (a) no information is produced to the Commissioner within the time specified in the notice or within such further time as the Commissioner, either before or after the expiration of the time specified in the notice, allows; or
- (b) the information produced to the Commissioner does not satisfy him that those shareholders are not associated with one another in relation to any of the foreign shares held by them,

the Commissioner shall certify in writing that those shareholders are associated with one another in relation to foreign shares and those shareholders shall, subject to this Ordinance, be deemed to be shareholders who are associated with one another in relation to the foreign shares.

(4.) If, in relation to any two or more of the shareholders referred to in a notice under sub-section (2.) of this section, the information produced to the Commissioner satisfies him that those shareholders are not associated with one another in relation to foreign shares, the Commissioner shall certify accordingly and the shareholders specified in the certificate shall not, for the purposes of this Ordinance, be deemed to be associated with one another.

(5.) The Commissioner shall, forthwith after giving a certificate under this section, forward the certificate to the specified company and shall forward a copy of the certificate to each of the persons to whom notice was given under sub-section (2.) of this section.

Shares to  
remain foreign  
shares until  
Commissioner  
otherwise  
determines.

19.—(1.) Where the Commissioner has certified under section 17 of this Ordinance that shares in a specified company are foreign shares, those shares continue to be, for the purposes of this Ordinance, foreign shares until the Commissioner, by instrument in writing, cancels the certificate.

(2.) The Commissioner may, upon application made to him and upon being satisfied that shares that he has previously certified as foreign shares are no longer foreign shares, cancel the certificate previously issued by him and, thereupon, those shares cease to be foreign shares.

**20.**—(1.) Where the Commissioner has certified under section 18 of this Ordinance that shareholders in a specified company are associated with one another in relation to any foreign shares, those shareholders continue to be, for the purposes of this Ordinance, shareholders who are associated with one another in relation to those foreign shares until the Commissioner by instrument in writing certifies to the contrary.

Shareholders to remain associated shareholders until Commissioner otherwise determines.

(2.) The Commissioner may, upon application being made to him and being satisfied that such a shareholder is no longer associated with another shareholder in the specified company in relation to any foreign shares, certify accordingly and, thereupon, that shareholder ceases to be a shareholder in the specified company associated with that other shareholder in the specified company in relation to those foreign shares.

**21.** Where the Commissioner has, under section 18 of this Ordinance, cancelled a certificate, or has given a certificate under the last preceding section, the Commissioner shall give notice accordingly to the specified company and to the holder of the shares in question or to each of the shareholders concerned, as the case may be.

Notice of cancellation of certificate.

#### PART V.—RESTRICTION ON VOTING RIGHTS IN RESPECT OF FOREIGN SHARES.

##### **22.** In this Part—

- (a) a reference to a foreign share shall be read as a reference to a share that is to be deemed, by reason of Part IV., to be a foreign share; and
- (b) a reference to two or more shareholders associated with one another shall be read as a reference to two or more shareholders that are to be deemed, by reason of Part IV., to be shareholders who are associated with one another.

Interpretation.

**23.**—(1.) Where the Treasurer has, in pursuance of section 29 of this Ordinance, given directions that foreign shares in a specified company be disposed of in accordance with those directions, the person who holds those foreign shares shall not, on and after the date on which those directions are served on that person and until those shares cease to be foreign shares, be entitled to cast, in respect of those shares, a vote or votes on any question arising at a meeting of, or on a poll held by, the specified company.

Certain foreign shares not to confer any voting rights.

(2.) Where, on a date after the commencement of this Ordinance—

- (a) a share in a specified company becomes a foreign share;
- (b) a transfer of a foreign share in a specified company is registered and, notwithstanding the registration of the transfer, the share remains a foreign share; or

- (c) there is a change in the identity of the person or persons entitled to control the exercise of the right to cast a vote in respect of a foreign share in a specified company and, notwithstanding that change, the share remains a foreign share,

any person who holds that share is not entitled, whilst that share remains a foreign share, to cast in relation to that share any vote on any question arising at a meeting of, or on a poll held by, the specified company.

Variation in voting power where more than twenty-one per cent of foreign shares are held.

**24.—(1.)** A person who holds foreign shares in a specified company and would, on a poll at, or arising out of, a meeting of the specified company, be entitled, apart from this section, to cast, in respect of those foreign shares, a number of votes that exceeds twenty-one per centum of the total number of votes that may be cast in respect of all shares issued by the specified company is not entitled on such a poll to cast more than a number of votes equal to twenty-one per centum of the total number of votes that could, apart from this Part, be cast in respect of all shares issued by the specified company.

**(2.) Where—**

- (a) two or more persons hold foreign shares in a specified company;
- (b) those persons are shareholders associated with one another in relation to those shares; and
- (c) those persons would, apart from this section, be entitled to cast, in respect of foreign shares held by them in that specified company, a number of votes on a poll at, or arising out of, a meeting of the specified company that would exceed twenty-one per centum of the total number of votes that could, apart from this Part, be cast in respect of all shares issued by the specified company,

those persons together are not entitled on such a poll to cast, in respect of those foreign shares, a number of votes that exceeds twenty-one per centum of the total number of votes that could, apart from this Part, be cast in respect of all shares issued by the specified company.

**(3.)** Where the last preceding sub-section applies, each of the shareholders referred to in that sub-section is entitled, on a poll at, or arising from, a meeting of the specified company, only to cast, in respect of the foreign shares held by him, a number of votes that bears to the number of votes that could, apart from this section, be cast by him in respect of those foreign shares the same proportion as the number that is equal to twenty-one per centum of the total number of all votes that could, apart from this Part, be cast in respect of all shares issued by the specified company bears to the total number of votes that could, apart from this Part, be cast in respect of all the foreign shares held by all of those shareholders.

**25.—(1.)** At a meeting of a specified company, a ruling by the chairman of the meeting—

Rulings of chairman of meetings and validity of meetings and resolutions.

- (a) that a person is, notwithstanding anything in this Part, entitled to cast a vote at that meeting or, on a poll at, or arising out of, that meeting, in respect of a share in the specified company;
- (b) that a person is not, having regard to the provisions of this Part, entitled to cast a vote at that meeting or on such a poll in respect of a share in the specified company; or
- (c) with respect to the number of votes which persons together are entitled under this Part to cast on such a poll,

is, for the purpose of that meeting or that poll, final and conclusive.

(2.) A meeting, or a poll arising from a meeting, of a specified company or a resolution passed at such a meeting at which any of the votes cast are cast otherwise than in conformity with the provisions of this Part shall not be held to be invalid or open to objection by reason only of the fact that any of those votes are so cast.

#### PART VI.—DISPOSAL OF FOREIGN SHARES.

**26.** In this Part, a reference to a foreign share shall be read as a reference to a share that is to be deemed, by reason of Part IV., to be a foreign share.

Interpretation.

**27.** If, from certificates in respect of shares in a specified company issued by the Commissioner under Part IV., it appears to the directors of the specified company that—

Company to report to Commissioner when more than forty per cent of shares are foreign shares.

- (a) the aggregate value of the paid up capital represented by foreign shares in the specified company exceeds, or may exceed, forty per centum of the total paid up capital of the specified company; or
- (b) the aggregate value of the paid up capital represented by foreign shares in the specified company held by a person or by two or more persons who are, in relation to those shares, associated shareholders exceeds, or may exceed, twenty-one per centum of the total paid up capital of the specified company,

the company shall furnish a return to the Commissioner setting out—

- (c) the names of the persons who hold foreign shares and the number and value of foreign shares held in the name of each of those persons; and
- (d) the day or days on which those foreign shares became, or are to be deemed to have become, for the purposes of this Ordinance, foreign shares.

Report by the  
Commissioner  
to the Treasurer.

28. Where the Commissioner, after receiving a return under the last preceding sub-section, is satisfied that—

- (a) the aggregate value of the paid up capital represented by foreign shares in a specified company exceeds forty per centum of the total paid up capital of the specified company; or
- (b) the aggregate value of the paid up capital represented by foreign shares in a specified company held by a person, or by two or more persons who are, in relation to those shares, associated shareholders, exceeds twenty-one per centum of the total paid up capital of the specified company,

the Commissioner shall report accordingly to the Treasurer and shall specify in the report—

- (c) in respect of any of those foreign shares that are to be deemed, for the purposes of this Ordinance, to have become foreign shares on a day that is before the commencement of this Ordinance and have been held continuously since that day by the person or the respective persons in whose name or names those shares were held immediately before that commencement, the name of the person or the names of the persons by whom those shares were and are held; and
- (d) in respect of any of those foreign shares other than those referred to in the last preceding paragraph, the name of the person or the respective names of the persons in whose names those shares are held and the day on which those shares are, for the purposes of this Ordinance, to be deemed to have become foreign shares.

Power of the  
Treasurer to  
give directions.

29.—(1.) The Treasurer shall, upon receipt of a report from the Commissioner under the last preceding section, give, subject to this section, such directions with respect to the disposal of foreign shares as he thinks fit—

- (a) for the purpose of reducing the amount of the paid up capital represented by foreign shares in the specified company to an amount that is not greater than forty per centum of the total paid up capital of the company; or
- (b) for the purpose of reducing the amount of the paid up capital represented by foreign shares in the specified company held by a person or by two or more persons who are, in relation to those shares, associated shareholders to an amount that is not greater than twenty-one per centum of the total paid up capital of the company.

(2.) The power conferred by the last preceding sub-section does not extend to or in relation to foreign shares referred to in paragraph (c) of the last preceding section.

(3.) The Treasurer shall, in directions given under this section, specify the number of foreign shares to be disposed of and the persons in whose names the shares are held who are to dispose of those shares.

(4.) Directions under this section shall specify that the foreign shares referred to in the directions shall be disposed of to either—

- (a) a person (other than a corporation) who is ordinarily resident in Australia or New Zealand; or
- (b) a corporation that is not a foreign corporation.

(5.) In giving directions under this section, the Treasurer shall, so far as practicable, direct that the shares be disposed of in the reverse order to that in which they became foreign shares.

(6.) A direction under this section shall specify a period, not being less than three months and not more than two years after the date of the direction, within which shares held in the name of the persons specified in the direction are to be disposed of.

(7.) Directions given under this section shall be served on each person who is, by the directions, required to dispose of foreign shares in the specified company and a copy of the directions shall be given to the specified company.

**30.—(1.) Where—**

- (a) the Treasurer has given directions under the last preceding section that foreign shares be disposed of; and
- (b) the person specified in those directions does not, within one month after the expiration of the period specified in the directions as the period within which those shares are to be disposed of, satisfy the Treasurer that all of those foreign shares have been disposed of in accordance with the directions or otherwise have ceased to be foreign shares,

Treasurer may direct that foreign shares not disposed of shall vest in the Commissioner.

the Treasurer may, by instrument in writing, direct that any of those foreign shares that have not been so disposed of and have not otherwise ceased to be foreign shares shall vest in the Commissioner.

(2.) The Treasurer shall cause a copy of an instrument under the last preceding section to be served on—

- (a) the specified company in which the foreign shares are held;
- (b) each person in whose name the shares referred to in the notice are held; and
- (c) the Commissioner.

(3.) Upon the service on the specified company of a copy of an instrument under sub-section (1.) of this section—

- (a) the shares referred to in the notice vest absolutely in the Commissioner; and
- (b) the specified company shall register the Commissioner as the holder of the shares as if the shares had been transferred to the Commissioner by the person or persons in whose name the shares were held immediately before service of the copy of the instrument on the specified company.

Commissioner to dispose of shares vested in him.

**31.—(1.)** The Commissioner shall, as soon as practicable after foreign shares have vested in him under the last preceding section, dispose of those foreign shares by sale on a stock exchange, and, for the purposes of such a sale, any shares that the Commissioner purports to sell under this section shall be deemed to have been duly vested in the Commissioner and the Commissioner shall be deemed to be the absolute owner of the shares.

(2.) Where the Commissioner has sold shares under this section, the proceeds of the sale less any costs necessarily incurred by the Commissioner in making the sale shall be paid to the person in whose name the shares were held at the time they vested in the Commissioner.

(3.) Where, in pursuance of this Part, the Commissioner has sold foreign shares, the Commissioner is not liable to the person in whose name the shares were held immediately before the shares became vested in the Commissioner or to any person claiming through such a person in respect of the sale, either in respect of the price at which the shares were sold or otherwise unless it is established that the Commissioner acted otherwise than in good faith or acted without reasonable care.

#### PART VII.—MISCELLANEOUS.

Statements not to constitute notice of trust.

**32.** Neither a specified company, a person dealing with the shares of a specified company, the Commissioner nor the Registrar of Companies shall be affected, otherwise than for the purposes of this Ordinance, by notice of any trust (whether express, implied or constructive) by reason of any statement, information or particulars contained in any document made or given under, or for the purposes of, this Ordinance.

Certificate by Commissioner is final and conclusive.

**33.** A certificate by the Commissioner under Part III. or Part IV. is final and conclusive.

Evidentiary provisions.

**34.—(1.)** A document certified by the Commissioner to be a true copy of a certificate given by him under Part III. or IV. or of the cancellation of such certificate is evidence of the certificate or the cancellation, as the case may be.

(2.) A document that purports to be a document certified by the Commissioner for the purpose of the last preceding sub-section shall, unless the contrary is proved, be deemed to be such a document.

(3.) In the absence of proof to the contrary, a certificate given by the Commissioner under Part III. or Part IV. shall be deemed to have continued in force.

Service of documents.

**35.—(1.)** For the purposes of this Ordinance, a document may be given to, or served on, a shareholder in a specified company by sending the document to that shareholder by post to the address specified in the register of members of that company as the address of that shareholder.



(2.) For the purposes of this Ordinance, a certificate by the Commissioner or other document may be given to, or served on, a person who has made application for the registration of a transfer of shares in a specified company by sending the document to that person by post at the address specified as his address in the application for the registration of the transfer.

**36.—**(1.) The registration of a transfer of foreign shares in a specified company, or the allotment of shares in a specified company, is, notwithstanding anything contained in this Ordinance and notwithstanding that an offence against this Ordinance may have been committed by reason of that registration or allotment, valid for all purposes.

Validity of entries made in contravention of this Ordinance.

(2.) Nothing in the last preceding sub-section affects the operation of Part IV., V. or VI.

**37.** A specified company shall not destroy or dispose of a certificate or other document given under this Ordinance by the Commissioner in relation to shares in the specified company except with the approval of the Commissioner.

Certificates to be retained by specified company.

**38.** A person who, with intent to deceive, makes a false or misleading statement in, furnishes false or misleading information in, or makes any material omission from, a document made or given under or for the purposes of this Ordinance is guilty of an offence against this Ordinance.

False or misleading statements.

**39.** A specified company which contravenes or fails to comply with a provision of this Ordinance is guilty of an offence against this Ordinance.

Offences by specified companies.

**40.** Where a specified company is convicted of an offence against this Ordinance, each person who, at the time of the commission of the offence, was a director of the specified company shall be deemed to be guilty of the offence and punishable as if the offence had been committed by a person other than a body corporate unless he proves that the offence was committed without his knowledge or that he took all reasonable steps to prevent the commission of the offence.

Directors to be guilty of offence against this Ordinance.

**41.** The penalty for an offence against this Ordinance is—

Penalties.

(a) in the case of a person other than a body corporate—a fine not exceeding One thousand dollars, or imprisonment for a term not exceeding six months, or both a fine not exceeding that amount and imprisonment not exceeding that term; and

(b) in the case of an offence by a body corporate—a fine not exceeding Two thousand dollars.

Offences to be  
summary  
offences.

**42.** An offence against this Ordinance is punishable summarily.

Regulations.

**43.** The Treasurer may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and, in particular—

- (a) prescribing the forms of documents and notices under this Ordinance; and
- (b) prescribing fees to be paid in respect of matters arising under this Ordinance.

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