

New Zealand.

## ANALYSIS.

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1935, No. 24.

AN ACT to amend the Mortgage Corporation of New Zealand Act, 1934-35. Title.  
[26th October, 1935.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Mortgage Corporation of New Zealand Amendment Act, 1935, and shall be read together with and deemed part of the Mortgage Corporation of New Zealand Act, 1934–35 (hereinafter referred to as the principal Act).

On transfer to Corporation of securities pursuant to Part V of principal Act, the right to recover arrears of interest to become vested in Corporation.

2. (1) On the transfer to the Corporation of any securities pursuant to Part V of the principal Act the right to recover any interest that may be payable thereunder in respect of any period prior to the date on which the transfer took effect shall become vested in the Corporation.

Consequential amendment of principal Act.

(2) The principal Act is hereby consequentially amended, as from the passing thereof, as follows:—

(a) By repealing subsection two of section thirty-seven thereof:

(b) By inserting, after the word “capital” in subsection two and also in subsection four of section thirty-eight thereof, the words “or other”.

Provision for losses in respect of interest on securities transferred to Corporation.

3. (1) If in any financial year the Board is of opinion that provision should be made in its accounts for any unascertained losses that may be incurred on account of interest payable to the Corporation in respect of securities transferred to it pursuant to Part V of the principal Act and accruing after the date of transfer, such provision may be made by way of addition to the Corporation’s contingent liability to the Crown and not otherwise.

(2) If at the end of any financial year the amount of the Corporation’s contingent liability in respect of interest on securities transferred to the Corporation as aforesaid (whether such interest accrued on or before the date of the transfer or accrues thereafter) exceeds the amount of interest then actually in arrear and unpaid, an amount equal to the excess shall be paid by the Board into the Public Account, and the contingent liability shall be deemed to be reduced accordingly.

(3) For the purposes of the last preceding subsection the Auditors of the Corporation shall from time to time as occasion requires certify the amount of the

Corporation's contingent liability to the Crown in respect of interest on securities transferred to the Corporation. In determining what portion of the Corporation's contingent liability is in respect of interest and what portion of its contingent liability is in respect of principal, account shall be taken by the Auditors of the capitalization of any arrears of interest owing to the Corporation in respect of any transferred securities.

4. (1) Where the Board, whether before or after the passing of this Act, has expended any moneys for the purpose of protecting the security afforded by any mortgages transferred to the Corporation pursuant to Part V of the principal Act (including mortgages that by virtue of any of the provisions of this Act are deemed to be mortgages transferred to the Corporation pursuant to the said Part V), the amount so expended by the Board shall, for the purposes of subsection four of section thirty-eight of the principal Act, be deemed to be moneys secured by the said mortgages:

Protection of Corporation in respect of expenditure incurred by Board in safeguarding securities.

Provided that the foregoing provisions of this section shall not apply in any case where the Board, in incurring any expenditure as aforesaid, has failed to observe any general requirements or stipulations of the Minister of Finance with respect to the incurring of expenditure by the Board for the protection of its securities.

(2) Where the Board, for the purpose of protecting the security afforded by any mortgage transferred to it pursuant to Part V of the principal Act, arranges for the discharge of that mortgage and the acceptance by the Corporation of two or more mortgages over the same land or portion of the same land, with or without other land and whether from the same mortgagor or any other mortgagor or mortgagors, every mortgage so accepted by the Corporation shall, for the purposes of the principal Act, be deemed to be a mortgage transferred to the Corporation pursuant to Part V of that Act, and all powers, rights, privileges, discretions, and exemptions conferred on or accorded to the Corporation by the principal Act in respect of mortgages transferred to it as aforesaid shall apply accordingly with respect to every mortgage accepted by the Corporation as aforesaid.

Protection  
accorded to  
Corporation  
in respect  
of mortgages  
transferred  
to it under  
principal Act  
extended to  
mortgages  
given in  
substitution  
for transferred  
mortgages.

5. (1) All powers, rights, privileges, discretions, and exemptions conferred on or accorded to the Corporation by the principal Act in respect of mortgages transferred to it pursuant to Part V of that Act shall, in the event of the variation of any such mortgage pursuant to the provisions in that behalf of section thirty-nine of the principal Act, or in the event of any other variation not involving an increase in the amount of the moneys secured by the mortgage (other than an increase made for the purpose of protecting the security), continue in existence and operate in relation to the varied mortgage as fully and effectually in all respects as if the mortgage had not been varied.

(2) Where any mortgage transferred to the Corporation pursuant to Part V of the principal Act is secured over land of any of the classes specified in paragraphs (b) to (s) of subsection one of section thirty-two of the State Advances Act, 1913, or is secured over any lease to which the provisions of section ninety-seven of the Native Land Amendment Act, 1913, apply, and the mortgagor's title has been forfeited, cancelled, or surrendered (whether before or after the passing of this Act and whether before or after the date of transfer to the Corporation), and a new lease or other right over the same land or over any portion of the same land is granted to the same or any other person who gives to the Corporation a new mortgage in substitution for the original mortgage, the new mortgage shall, for the purposes of the principal Act, be deemed to be a mortgage transferred to the Corporation pursuant to Part V of that Act, and all powers, rights, privileges, discretions, and exemptions conferred on or accorded to the Corporation by the principal Act in respect of mortgages transferred to it as aforesaid shall continue in existence and shall operate in relation to the new mortgage accordingly.

(3) Where the Corporation in exercise of its powers in respect of any mortgage transferred to it pursuant to Part V of the principal Act sells the mortgaged land and accepts another mortgage to secure the purchase-money or any part thereof, such other mortgage shall, for the purposes of the principal Act, be deemed to be a mortgage transferred to the Corporation pursuant to

See Reprint  
of Statutes,  
Vol. VIII,  
p. 502  
Ibid., Vol. VI,  
p. 355

Part V of that Act, and all powers, rights, privileges, discretions, and exemptions conferred on or accorded to the Corporation by the principal Act in respect of mortgages transferred to it as aforesaid shall continue in existence and shall operate in relation to such other mortgage accordingly. The foregoing provisions of this subsection shall apply with the necessary modifications with respect to any subsequent mortgage or subsequent mortgages that may be given to the Corporation to secure the purchase-money or any part of the purchase-money in cases where the Corporation at any later time exercises its powers of sale in respect of the property comprised in the original mortgage transferred to it as aforesaid.

**6.** (1) This section applies where any loan granted by the Corporation is secured by a mortgage of the mortgagor's interest in—

- (a) Any lease of any Crown lands or of any other lands vested in His Majesty:
- (b) Any lease of lands subject to Part XIV or Part XV of the Native Land Act, 1931, or the corresponding provisions of any former Act relating to Native lands:
- (c) Any lease granted under the Westland and Nelson Native Reserves Act, 1887, or under the West Coast Settlement Reserves Act, 1892:
- (d) Any lease issued by the Native Trustee, in terms of the Public Bodies' Leases Act, 1908, over lands comprised in a Native reserve.

(2) In this section,—

“Lease” includes an agreement to lease and a license to occupy:

The expression “leasing authority”, in relation to any lands referred to in paragraph (a) of the last preceding subsection, means the Land Board of the district in which those lands are situated; in relation to any lands referred to in paragraph (b) of the last preceding subsection, means the Maori Land Board of the Maori land district in which such lands are situated; and in relation to any lands referred to in paragraph (c) or paragraph (d) of the last preceding subsection, means the Native Trustee.

Special provisions applicable in cases where Corporation lends on security of leasehold interests in Crown lands or certain classes of Native lands.  
Cf. 1914, No. 19, s. 14; see Reprint of Statutes, Vol. VIII, p. 980  
Ibid., Vol. IV, p. 1031

(3) Except with the consent of the Board, and on such terms as it thinks fit, it shall not be lawful for any leasing authority to forfeit or cancel the mortgagor's title for breach of the conditions, or to accept any surrender thereof, or to cancel the mortgagor's right to compensation for or valuation of improvements, without giving to the Board at least three months' previous notice in writing of its intention so to do.

(4) Notwithstanding such forfeiture, cancellation, or surrender, the mortgage to the Corporation shall, by virtue of this section, be deemed to be a first charge on the improvements then existing on the lands for all moneys payable in respect thereof by any incoming tenant or occupier of the land (to the extent to which the mortgagor would have had interest therein if his title to the land had been lawfully determined otherwise than by forfeiture, cancellation, or surrender), and such moneys shall be paid to the Corporation accordingly:

Provided that the Board may accept from such incoming tenant or occupier a mortgage of his estate and interest in the land in lieu of cash, and any restrictions imposed by any Act on the right of the tenant to mortgage or assign his interest shall not apply in the case of a mortgage granted under this subsection.

(5) If, in the event of such forfeiture, cancellation, or surrender, the Board and the leasing authority are unable to agree as to the value of the mortgagor's interest in the improvements, such value shall be determined by arbitration.

(6) In the event of the Corporation, as mortgagee in possession, granting a lease or other tenancy of the land, or of any part thereof (which it is hereby empowered to do without the consent of the leasing authority), then, for the purpose of preventing forfeiture or cancellation of the mortgagor's title for breach of conditions, but for no other purpose, fulfilment of conditions by the person in actual possession under such lease or other tenancy shall be considered as fulfilment by the mortgagor:

Provided that, in the case of any land administered by a Land Board, the grant of a lease by the Corporation shall be subject to the approval of the Minister of Lands

and in the case of any land administered by a Maori Land Board or the Native Trustee, the grant of a lease by the Corporation shall be subject to the approval of the Native Minister.

(7) Where the Corporation as mortgagee in possession of any land grants a lease or other tenancy thereof in accordance with the last preceding subsection, the rent received by the Corporation shall be apportioned between the Corporation and the leasing authority in proportion to the values of the respective capital interests in the land of the Corporation and the leasing authority (as representing the Crown or other owner of the land), or in such other proportions as may be mutually agreed to between the Corporation and the leasing authority. Any rent or other revenue that may be received by the leasing authority in respect of a temporary lease or license granted after the cancellation, forfeiture, or surrender of the mortgagor's title shall be similarly apportioned between the leasing authority and the Corporation.

(8) If the Board sells the security in exercise of its powers of sale, any restrictions imposed by any Act on the right of a lessee or licensee to mortgage or assign his interest in the land shall not apply with respect to the sale to the purchaser, nor shall any such restrictions apply with respect to the mortgage by the purchaser of his estate or interest in the land to the Corporation to secure the whole or any part of the purchase-money.

(9) Any sale by the Corporation in exercise of its powers of sale may be by public auction or private contract, as the Board in its discretion thinks fit, and in the case of sale by private contract advertising shall not be necessary:

Provided that in the case of any lands administered by a Land Board the sale shall be subject to the approval of the Minister of Lands.

(10) The power of sale shall be deemed to arise and accrue and may, without the consent of the leasing authority, be exercised by the Board at any time after the expiration of the period limited in that behalf by the mortgage, anything to the contrary in any Act notwithstanding.

Corporation  
may borrow  
moneys on  
hypothecation  
of its own  
securities.

7. (1) In anticipation of the issue by it at any time of any bonds, stock, or other securities the Corporation may, by the hypothecation or mortgage of any such bonds, stock, or other securities, borrow such sum or sums as the Board thinks fit, not exceeding in the aggregate such amount as, together with all moneys borrowed under the authority of section twenty-one of the principal Act and then outstanding, would be equal to the total amount that the Corporation is empowered to borrow under the authority of that section. All moneys borrowed under the authority of this section shall be a first charge on and shall be repaid out of the first moneys thereafter to be borrowed by the Corporation under the authority of section twenty-one of the principal Act.

(2) Where the Corporation exercises the power of hypothecation or mortgage of its securities conferred on it by this section, the following provisions shall apply:—

- (a) Any person lending money on the security of such hypothecation or mortgage shall be entitled to possession of the bonds, stock, or other securities hypothecated or mortgaged until the loan and all interest and other charges payable in respect thereof have been paid:
- (b) The bonds, stock, or other securities hypothecated or mortgaged as aforesaid may exceed in face value by any amount the sums borrowed by the Corporation:
- (c) The Corporation may by the deed or other instrument of hypothecation or mortgage confer on the lender a power of sale of all or any of the bonds, stock, or other securities hypothecated or mortgaged, and such power may be exercised by the lender in such circumstances, in such manner, and to such extent as may be provided in such deed or instrument. On the sale of any securities pursuant to this paragraph such securities shall for all the purposes of the principal Act be deemed to be securities issued by the Corporation.



8. If in any financial year the Board is satisfied that there will be a surplus available for payment into the Public Account at the end of the year, in accordance with the provisions of paragraph (a) of section forty-two of the principal Act, it may authorize the payment in advance to the Public Account of the whole or any part of the amount which, in its opinion, will become payable to the Public Account in respect of that year pursuant to the said section.

Board may in any year authorize payment in advance to Public Account in respect of profits for that year.

9. (1) The Minister of Stamp Duties may from time to time agree with the Board to exempt from stamp duty all cheques and receipts issued or given on account of the Corporation in consideration of the payment by the Board of such sums as may be agreed upon by way of composition for such stamp duty.

Composition of stamp duty in respect of cheques and receipts by Corporation.

*Cf.* 1923, No. 26, s. 144; see Reprint of Statutes, Vol. VII, p. 440

(2) Every sum so payable by way of composition shall constitute a debt payable by the Corporation to His Majesty and due on such dates as may be so agreed upon.

(3) Every such agreement shall be terminable by not less than one month's notice in writing given by the Board to the Minister of Stamp Duties or by that Minister to the Board and expiring on the due date of the next succeeding payment by way of composition; and all such cheques or receipts issued or given after that date shall be charged with stamp duty in the ordinary course.

10. Section twenty-one of the principal Act is hereby amended, as from the passing of that Act, by adding to subsection one the following words: "No securities issued by the Corporation pursuant to this section shall be deemed to be mortgages to which the Mortgagees' Indemnity (Workers' Charges) Act, 1927, is applicable".

Securities issued by Corporation exempted from mortgagee's indemnity fee.

See Reprint of Statutes, Vol. VII, p. 1286

11. In addition to the modes authorized by sections twenty-six and twenty-seven of the principal Act for securing loans granted by the Corporation, and notwithstanding anything to the contrary in those sections, any such loan may, if in the special circumstances of the case the Board thinks fit, be secured by a mortgage containing, in addition to any other terms and conditions

Authorizing additional form of mortgage as security for loans granted by Corporation.

that may be agreed to, special conditions to the following effect:—

(a) Every such mortgage shall be for a term not exceeding five years, but may from time to time be renewed at the option of the Board:

Provided that the term of any renewal shall not exceed five years and the aggregate term of the mortgage and of every renewal thereof shall not exceed fifty years:

(b) In each year of the term of the mortgage and of every renewal thereof the mortgagor shall be required to pay off such amount of the principal moneys secured thereby as may be prescribed in the mortgage or in the instrument of renewal, being not less in any year than one per centum of the capital moneys originally secured by the mortgage:

(c) On any renewal of any such mortgage, any of the terms and conditions thereof, including the rate of interest, may be varied.

Section 28  
of principal  
Act amended.

**12.** Section twenty-eight of the principal Act is hereby amended, as from the passing of that Act, by adding to subsection one the following proviso:—

“ Provided that nothing in this Act or in any other Act shall be construed to require the execution of any mortgage by or on behalf of the Corporation as mortgagee.”

Alternative  
evidence of  
transfer of  
securities to  
Corporation.

**13.** Section thirty-seven of the principal Act is hereby amended, as from the passing of that Act, by inserting, after subsection four, the following subsection:—

“(4A) The presentation to any Registrar of Deeds or any District Land Registrar or any other person of an instrument executed by or on behalf of the Corporation and relating to any security that has at any time been vested in the Crown, or in the State Advances Superintendent, or in any other person on behalf of the Crown, shall, notwithstanding that a certificate may not have been issued under the last preceding subsection, be accepted by all persons concerned as conclusive proof that such security has been transferred to the Corporation pursuant to this section.”

14. Section thirty-eight of the principal Act is hereby amended, as from the passing of that Act, by inserting, after the words "bonds or stock" in the proviso to subsection one, the words "or other securities".

Section 38  
of principal  
Act amended.

15. No stamp duty shall be charged in respect of the variation of any mortgage pursuant to section thirty-nine of the principal Act, or in respect of the execution, discharge, or partial discharge of any mortgage or of any other instrument whatsoever given to the Corporation as collateral security for the moneys secured by any mortgage transferred to the Corporation pursuant to Part V of the principal Act (including any mortgage that by virtue of any of the provisions of this Act is deemed to be a mortgage transferred to the Corporation as aforesaid).

Exemption  
from stamp  
duty.

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