



ANALYSIS

- | | |
|---|--|
| <p>Title</p> <p>1. Short Title and commencement</p> <p>2. Invitation to public to deposit money with or lend money to company</p> <p>3. Application of Act to private companies</p> | <p>4. Application of section 48A of principal Act to overseas companies</p> <p>5. Section 48A of principal Act not to apply to banks</p> <p>6. Disclosure in balance sheet of unsecured deposits and loans</p> |
|---|--|

1960, No. 49

An Act to amend the Companies Act 1955

[25 October 1960]

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

1. Short Title and commencement—(1) This Act may be cited as the Companies Amendment Act 1960, and shall be read together with and deemed part of the Companies Act 1955* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-one.

2. Invitation to public to deposit money with or lend money to company—The principal Act is hereby amended by inserting, after section 48, the following section:

“48A. (1) In this section, unless the context otherwise requires,—

“ ‘Advertisement’ includes any notice, circular, or other document:

“ ‘Issued’, in relation to any invitation or advertisement, includes published, circulated, or distributed.

“(2) Where at any time after the commencement of this section any invitation is issued to the public to deposit

money with or to lend money to any company, the invitation shall, in whatever form it is issued, be deemed for the purposes of this Act to be a prospectus issued by the company inviting persons to subscribe for debentures of the company; and all the provisions of this Act and all other enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, so far as they are applicable.

“(3) Every advertisement designed only to make the public aware of any such invitation, or of any opportunity to deposit money with or lend money to any company, whether by application or offer, shall state that forms of application or offer, together with a prospectus, may be obtained at a place specified in the advertisement.

“(4) Where any such invitation or advertisement is issued, and the deposits or loans to which it relates are not to be secured by a charge or charges on the company's undertaking or on any of the company's assets, any statement in the invitation or advertisement relating to documents to be issued evidencing such deposits or loans shall refer to those documents as unsecured deposit notes or unsecured notes, or by some other description which includes the word 'unsecured', and shall not refer to the documents as debentures.

“(5) Subject to the provisions of subsection (7) of this section, no company shall, at any time after the commencement of this section, accept a deposit or loan of money from any person unless—

“(a) The deposit or loan is accompanied by a form of application or offer signed by that person; and

“(b) The form was supplied to him with a prospectus which complies with the requirements of this Act; and

“(c) The prospectus so supplied was published within the period of thirteen months immediately preceding the date on which the form of application or offer was supplied to him.

“(6) Subject as aforesaid, where at any time after the commencement of this section any company accepts any deposit or loan of money from any person, and the repayment of the money is not to be secured by a charge on the company's undertaking or on any of the company's assets, the company shall issue to him as evidence thereof a document acknowledging the company's indebtedness in respect of the deposit or loan. The document shall be described on its face as an unsecured deposit note or an unsecured note, or shall bear

on its face some other description which includes the word 'unsecured', and shall not be described in any part of it as a debenture.

“(7) This section shall not apply to any deposit with or loan to any company if it is shown that the deposit or loan was not made in response to an invitation issued to the public, and was not made in response to an advertisement designed to make the public aware of any such invitation or of an opportunity to deposit money with or lend money to the company.

“(8) If any invitation or advertisement or document is issued in contravention of this section, or if any company acts in contravention of or fails to comply in any respect with any of the provisions of this section, the company and every person who is knowingly a party to the contravention or non-compliance shall be liable to a fine not exceeding five hundred pounds.”

3. Application of Act to private companies—(1) Section 354 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) Section 133 of this Act (as to documents to be annexed to the annual return) shall not apply to a private company unless at the time when the company's annual return is required to be made the company is indebted to any person in respect of any deposit or loan to which section 48A of this Act applies.”

(2) Section 354 of the principal Act is hereby further amended by inserting, after subsection (3), the following subsection:

“(3A) Notwithstanding anything in subsection (3) of this section, section 163 of this Act (as to the appointment of auditors) shall apply to the annual general meeting of a private company if at the time when the company holds that meeting or otherwise adopts or approves its balance sheet pursuant to this Act the company is indebted to any person in respect of any deposit or loan to which section 48A of this Act applies.”

(3) Section 360 of the principal Act is hereby amended by adding the following subsection:

“(3) If at the time when the annual return is required to be made a private company is not indebted to any person in respect of any deposit or loan to which section 48A of this Act applies, there shall be added to the certificate referred to in subsection (2) of this section a statement that the company is not so indebted.”

PRINTED

(4) The Sixth Schedule to the principal Act is hereby amended as follows:

(a) By inserting in the form headed "*Certificate to be Given by a Director and the Secretary of Every Private Company*", after the words "shares in its capital", the words "[*Add, where applicable,*] and is not indebted to any person in respect of any deposit or loan to which section 48A of the Companies Act 1955 applies":

(b) By inserting, after the words "Except where the company is a private company as defined by section 2 of the Companies Act 1955" (under the heading "*Certified Copies of Accounts*"), the words "and is not indebted to any person in respect of any deposit or loan to which section 48A of that Act applies".

(5) The Ninth Schedule to the principal Act is hereby consequentially amended by repealing so much thereof as relates to section 133 of the principal Act.

4. Application of section 48A of principal Act to overseas companies—The principal Act is hereby further amended by inserting, after section 410, the following section:

"410A. Section 48A of this Act (which was inserted by section 2 of the Companies Amendment Act 1960) shall apply in respect of every company incorporated outside New Zealand as if the references in the said section 48A to a company were references to a company incorporated outside New Zealand, and as if the references in that section to this Act were references to this Part of this Act."

5. Section 48A of principal Act not to apply to banks—Section 458 of the principal Act is hereby amended by adding to subsection (4) the following proviso:

"Provided that section 48A of this Act (as applied by section 410A of this Act) shall not apply to any bank or any such other company as aforesaid."

6. Disclosure in balance sheet of unsecured deposits and loans—The Eighth Schedule to the principal Act is hereby amended by inserting in paragraph 10, after subparagraph (c), the following subparagraph:

"(cc) The aggregate amount of the company's indebtedness in respect of unsecured deposits and unsecured loans:"