

COMPANIES AMENDMENT BILL

EXPLANATORY NOTE

THE main purpose of this Bill is to protect investors by requiring companies that invite the public to deposit money with or lend money to them to issue a prospectus. The Bill also contains provisions restricting the use of the term "debenture" in relation to documents acknowledging such deposits or loans where no security over a company's assets is given. Special provisions relating to filing accounts and appointing auditors are made in respect of private companies that accept deposits or loans made in response to such invitations to the public.

Clause 1: The Bill will come into force on 1 January 1961.

Clause 2: The effect of *subsection (2)* of the new section 48A inserted by this clause is that every invitation to the public to deposit money with or lend money to a company is to be treated as a prospectus issued by the company inviting persons to subscribe for debentures; and all the provisions of the principal Act and of any rule of law relating to prospectuses will apply.

Subsection (3) relates to advertisements designed only to make the public aware of any such invitation, or of an opportunity to deposit or lend money. Every such advertisement must specify a place at which forms of application or offer and a prospectus may be obtained.

Subsection (4) provides that if the deposits or loans are not to be secured by a charge on assets of the company any statement in the invitation or advertisement relating to documents to be issued evidencing the deposits or loans must refer to the documents as unsecured deposit notes or unsecured notes, or by some other description which includes the word "unsecured". It must not refer to the documents as debentures.

Subsection (5) prohibits the acceptance of a deposit or loan unless it is accompanied by a signed form of application or offer, and unless the form was supplied to the depositor or lender with a prospectus issued not more than thirteen months before the form was so supplied.

Subsection (6): If the deposit or loan is not secured by a charge on assets of the company, it must issue a document acknowledging its indebtedness in respect of the deposit or loan. The document is to be described on its face as an unsecured deposit note or an unsecured note, or must bear some other description which includes the word "unsecured", and must not be described as a debenture.

Subsection (7) provides that the section does not apply where it is shown that the deposit or loan was not made in response to an invitation or advertisement issued to the public.

Subsection (8) provides for a fine not exceeding £500 for a breach of the section.

Clause 3 deals with the case where an invitation to the public to deposit money with or lend money to a private company is issued by or on behalf of the company. The effect of the amendments made by the clause is that in any such case, until all money deposited or lent in response to the invitation is repaid, the company must file certified copies of its accounts with its annual return, and must have an auditor.

Clause 4 applies the new section 48A to overseas companies.

Clause 5: The effect of this clause is that the new section 48A will not apply to banks even though they are incorporated overseas.

Hon. Mr Mason

COMPANIES AMENDMENT

ANALYSIS

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1. Short Title and commencement	4. Application of section 48A of principal Act to overseas companies
2. Invitation to public to deposit money with or lend money to company	5. Section 48A of principal Act not to apply to banks

A BILL INTITULED

An Act to amend the Companies Act 1955

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 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).
10 (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:

*1957 Reprint, Vol. 2, p. 349
Amendment: 1959, No. 55

“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, 5
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 10 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 15 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 20 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 25 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 docu- 30 ments 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 35 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 40

“(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.”

(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.”