

## COMPANIES AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Companies Act 1955.

*Clause 1* relates to the Short Title and commencement. The Act will come into force on 23 September 1965, the date of the introduction of the Bill.

*Clause 2:* By a decision of the Court of Appeal in *Jenkins v. Harbour View Courts Ltd. and Others* (not yet reported) it was decided that a grant by a flat-owning company to one of its shareholders of the right to occupy a specified flat in a building owned by the company pursuant to a provision in the articles of association of the company entitling the shareholder to occupy that flat amounted to a return of capital to the shareholder which had not been made in the manner required by the Companies Act 1955, and was therefore unlawful.

This clause declares that such a grant is not a return of capital, and validates such grants made in the past.

*Subclause (2)* preserves the rights of the parties to the judgment the subject of the appeal, and also provides that the rights of other members of the flat-owning company are to be determined under the law in force before the commencement of the Act. The subclause also protects existing rights of creditors who had claims or demands against any company immediately before the commencement of the Act. Such claims or demands may be made and enforced under the law in force before the commencement of the Act.

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*Hon. Mr Hanan*

## COMPANIES AMENDMENT

### ANALYSIS

Title	2. Grant to shareholder of right to occupy land or building not a return of capital
1. Short Title and commencement	

### 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 1965, 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 be deemed to have come into force on the twenty-third day of September, nineteen hundred and sixty-five.

**2. Grant to shareholder of right to occupy land or building not a return of capital**—(1) The principal Act is hereby  
15 amended by inserting, after section 80, the following section:  
“80A. (1) Notwithstanding anything in this Act or in any rule of law, any grant (whether made before or after the commencement of this section) by a company to a shareholder

\*1957 Reprint, Vol. 2, p. 349

Amendments: 1959, No. 55; 1960, No. 49; 1963, No. 136; 1964, No. 42

of the right to occupy or use any specified land owned by the company or any specified building or part of a building owned by the company pursuant to a provision in the articles of the company entitling him as the registered holder of specified shares in the company to that occupation or use shall be deemed not to be and never to have been a return of capital by the company to the shareholder. 5

“(2) The provisions of this section shall apply whether the grant is by way of lease or licence or otherwise, and whether or not the grant is registrable under the Land Transfer Act 1952, and whether or not, in the case of a grant in respect of a building or part of a building, the grant also entitles the shareholder to any right of user of any garage, outbuilding, or other structure, or of any passages, stairways, or other appurtenances, services, or conveniences of any building, or of any land appurtenant to the building or part of a building.” 15

(2) Nothing in subsection (1) of this section shall affect—

- (a) The rights of the parties under any judgment given in any Court before the commencement of this Act or under any judgment on appeal from any such judgment, whether the appeal is commenced before or after the commencement of this Act: 20
- (b) The rights of any member of the company making any such grant which was a party to the proceedings in which any such judgment was given, and those rights shall be determined as if this Act had not been passed: 25
- (c) The rights of any person (not being a person entitled to the benefit of any such grant) who immediately before the commencement of this Act had a claim or demand against a company, and every such claim or demand may be made and enforced as if this Act had not been passed. 30