

COMPANIES TEMPORARY EMPOWERING BILL.

EXPLANATORY MEMORANDUM.

THE necessity for the Bill is correctly stated in the Preamble. It is desirable to enable companies which hold existing deposits to give preference shares to the depositors who are willing to accept them in exchange for the liability of the deposits. But inasmuch as the company is at present entitled to deduct the interest it pays to the depositors from the assessable income for the purpose of income-tax, its position would be changed in that respect by the transposition of deposits into preference shares. Instead of the deduction, the company would be required to pay income-tax upon the amount of dividend paid to the depositors.

It is therefore proposed by the Bill to enable companies holding existing deposits to create a specific class of "deposit preference shares" which the company can specifically exchange with depositors for existing deposits, and by clause 6 it is provided that for the period of five years from the commencement of the Act the company shall be entitled to deduct from its assessable income the dividend payable to deposit preference shareholders in the same manner as it is now entitled to deduct the interest paid to depositors. The holders of the deposit preference shares will pay income-tax on their dividends.

No. 117—1.

Hon. Mr. Lee.

COMPANIES TEMPORARY EMPOWERING.

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A BILL INTITULED

AN ACT to enable Companies holding Existing Deposits to create Preference Shares in Exchange for such Deposits. Title.

WHEREAS certain companies in New Zealand holding moneys upon contract of deposit have by reason of the financial conditions consequent upon the late war and of the depreciation in market selling values of the principal products of the Dominion found difficulties in meeting payments to their depositors on the due dates for repayment: And whereas in certain cases such depositors are willing to acquire preference shares in such companies in exchange for the amounts or part of the amounts owing to them as depositors, but the effect of such transposition of the liability of the company for interest into a dividend payable to a shareholder would be to largely increase the income-tax annually payable by such companies: And whereas it is desirable to make special and temporary provision enabling such arrangements to be made between depositors and companies without thereby increasing the liability of the companies in respect of income-tax: Preamble.

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

1. This Act may be cited as the Companies Temporary Empowering Act, 1921-22. Short Title.

2. In this Act, if not inconsistent with the context,—
"Company" means a company incorporated in New Zealand under the law of New Zealand in force at the date of its incorporation and holding existing deposits: Interpretation.

“Existing deposits” means moneys held by a company at the date of the commencement of this Act upon a contract or agreement, express or implied, that the same shall be repaid either at a fixed date, or by instalments, or at call, and bearing interest until repayment at an agreed rate; but does not include moneys secured by a series of debentures or by mortgage. 5

Company holding existing deposits may create “deposit preference shares.”

3. (1.) Every company which holds existing deposits is (notwithstanding anything in its memorandum or articles of association) hereby empowered by special resolution passed within one year after the commencement of this Act in the manner provided by section ninety-one of the Companies Act, 1908, to increase its capital by the creation of preference shares to an amount not exceeding the total amount of such existing deposits. 10

(2.) Such preference shares may be of such denomination and bear such rate of preferential dividend as the company by the said special resolution determines; but shall be separate from any other capital of the company, and shall be entitled “deposit preference shares.” 15

(3.) Nothing in this Act shall be deemed to empower a company to so create deposit preference shares as that the same shall have priority to, or preference over, or rank *pari passu* with any other preference shares of the company theretofore created and issued. 20

Issue of deposit preference shares.

4. A company may, after the creation of deposit preference shares, arrange with the depositor with it of any existing deposits that such depositor shall accept deposit preference shares in exchange for the amount or part of the amount of the existing deposits owing to such depositor. 25

Restriction on issue of deposit preference shares.

5. Deposit preference shares shall not be issued by the company otherwise than to a depositor with the company in exchange for the existing deposits or part of the existing deposits owing to such depositor. 30

Special provisions as to assessment of income of company issuing deposit preference shares.

6. Notwithstanding the provisions of any Act relating to income-tax,—

(a.) For the period of five years from the commencement of this Act, a company creating and issuing deposit preference shares shall be entitled to deduct in each year the dividends paid by the company to holders of deposit preference shares from its assessable and taxable income of that year in the same manner as it would otherwise be entitled to deduct interest paid on existing deposits: 35 40

(b.) For the period of five years from the commencement of this Act, the dividends received by a holder of deposit preference shares in respect of such shares shall be income of such holder assessable for income-tax payable by such holder. 45

Duration of Act.

7. This Act shall continue in force for *five* years from its commencement and no longer.