

COMPANIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Companies Act 1955 and the Companies Amendment Act 1963.

Clause 1 relates to the Short Title.

Clause 2: Section 86 of the principal Act provides that where the registered holder of any shares or debentures of a company has died and the total amount paid up on the shares or owing under the debentures does not exceed \$1,000, the Directors may, if certain conditions are satisfied, resolve that a person be registered as the holder of the shares or debentures without the production of probate. The effect of this clause is to increase the above-mentioned amount of \$1,000 to \$2,000.

Clause 3 inserts a new section 230 in the principal Act. The proposed new section empowers the Court to substitute one Official Assignee for another Official Assignee for the purposes of the winding up of a company.

Clause 4 amends section 308 of the principal Act (which prescribes the priorities for payment of claims in a company winding up) by increasing the maximum amount of arrears of wages or salary that may be paid to any person as a preferential payment from \$400 to \$1,500 or such greater amount as is prescribed by Order in Council.

This amendment does not apply in respect of any winding up that has commenced before the commencement of the Bill.

Clause 5 inserts a new section 456A in the principal Act. The proposed new section prohibits companies from promoting loan fund schemes.

Subclause (1) defines the term "loan fund scheme".

Subclause (2) provides that no company shall promote a loan fund scheme or invite any person to contribute or subscribe to, or participate in, a loan fund scheme.

Subclause (3) provides that where a company contravenes subclause (2), the company, and every officer thereof, commits an offence and is liable on summary conviction to a fine not exceeding \$1,000. The subclause also provides that no officer of a company shall be convicted under this subclause if, in the opinion of the Court, the contravention did not take place with his knowledge and consent.

Subclause (4) provides that the Governor-General may by Order in Council exempt any company, or class of companies, from this clause.

Clause 6: Subclause (1) amends the definition of the term "take-over scheme" in section 2 (1) of the Companies Amendment Act 1963. The effect of the amendment is to define a take-over scheme as a scheme involving the making of offers for the acquisition of any shares in a company which, together with shares, if any, to which the offeror is already beneficially entitled, carry the right to exercise or control the exercise of more than one fifth (rather than half, as at present) of the voting power at any general meeting of the offeree company.

Subclause (2) makes a drafting amendment.

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Hon. Mr Thomson

COMPANIES AMENDMENT

ANALYSIS

Title	
1. Short Title	5. Companies prohibited from promoting loan fund schemes
2. Vesting shares or debentures of deceased holder without requiring probate or letters of administration	<i>Companies Prohibited from Promoting Loan Fund Schemes</i>
3. Substitution of Official Assignee by Court	456A. Companies prohibited from promoting loan fund schemes
4. Preferential payments	6. Definition of "take-over scheme"

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, as follows:

1. Short Title—This Act may be cited as the Companies Amendment Act 1978, and shall be read together with and deemed part of the Companies Act 1955* (hereinafter referred to as the principal Act).

2. Vesting shares or debentures of deceased holder without requiring probate or letters of administration—(1) Section 86 (1) of the principal Act (as amended by section 17 of the Companies Amendment Act 1964 and section 7 of the

*Reprinted 1976, Vol. 4, p. 2601
Amendment: 1977, No. 94

Decimal Currency Act 1964) is hereby further amended by omitting the expression "\$1,000" in both places where it occurs, and substituting in each case the expression "\$2,000".

(2) Section 17 of the Companies Amendment Act 1964 is hereby consequentially repealed.

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3. Substitution of Official Assignee by Court—The principal Act is hereby amended by inserting, after section 229 (as substituted by section 2 (1) of the Companies Amendment Act 1967), the following section:

"230. Where after the appointment of an Official Assignee pursuant to section 229 of this Act the Court considers that the winding up of the company could be more conveniently carried out by another Official Assignee, the Court may, on the application of the Assignee first appointed, appoint that other Assignee to act in the winding up in place of the Assignee first appointed, and the Assignee so appointed under this section shall be deemed to be the Assignee in that winding up for all the purposes of this Act from the date of his appointment as such."

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4. Preferential payments—(1) Section 308 (2) of the principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby further amended by omitting the expression "\$400", and substituting the words "\$1,500 or such greater amount as is from time to time prescribed by the Governor-General by Order in Council".

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(2) Subsection (1) of this section shall not apply—

(a) In the case of a winding up, if the relevant date (as defined in section 308 (7) (c) of the principal Act) occurred before the commencement of this Act; or

(b) In the case of any matter to which section 101 of the principal Act applies, if the date referred to in subsection (3) of that section occurred before the commencement of this Act.

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(3) Where a greater amount is prescribed by Order in Council for the purposes of section 308 (2) of the principal Act (as amended by subsection (1) of this section), the greater amount shall not apply—

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(a) In the case of a winding up, if the relevant date (as defined in section 308 (7) (c) of the principal Act) occurred before the commencement of the order; or

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(b) In the case of any matter to which section 101 of the principal Act applies, if the date referred to in subsection (3) of that section occurred before the commencement of the order.

5 **5. Companies prohibited from promoting loan fund schemes**—The principal Act is hereby amended by inserting, after section 456, the following heading and section:

“Companies Prohibited from Promoting Loan Fund Schemes

10 **“456A. Companies prohibited from promoting loan fund schemes**—(1) In this section the term “loan fund scheme” means a scheme that, in substance and irrespective of its form, involves the contribution or subscription of money, directly or indirectly, by persons to a fund and confers on
15 each of those contributors or subscribers or on each of a substantial proportion of them an entitlement to receive out of the fund at some date, whether ascertainable or not, a loan the amount of which is determined by reference to the amount of money that each contributor or subscriber has contributed or subscribed or agreed to contribute or sub-
20 scribe to the fund.

“ (2) No company or overseas company shall promote a loan fund scheme or invite (whether by advertisement or any other means of communication) any person or persons to contribute or subscribe to or participate in (whether by
25 the allotment of shares or the granting of options to acquire shares or otherwise) a loan fund scheme.

“ (3) Where a company contravenes subsection (2) of this section the company, and every officer thereof, commits an offence, and is liable on summary conviction to a fine not
30 exceeding \$1,000:

“ Provided that no officer of a company shall be convicted under this subsection in respect of any such contravention if, in the opinion of the Court dealing with the case, the contravention did not take place with his knowledge and
35 consent.

“ (4) The Governor-General may by Order in Council exempt any company or overseas company, or class of companies or overseas companies, from compliance with sub-
40 section (2) of this section; and every such exemption shall have effect according to its tenor.”

6. Definition of "take-over scheme"—(1) Section 2 (1) of the Companies Amendment Act 1963 is hereby amended by omitting from the definition of the term "take-over scheme" the word "half", and substituting the words "one fifth of".

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(2) Section 5 (2) of the Companies Amendment Act 1963 is hereby amended by omitting the words "The offeree company", and substituting the words "After receipt of the notice and statement given to it by or on behalf of the offeror, the offeree company".

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