

1971/21



THE COMPANIES (OVERSEAS COMPANIES' ACCOUNTS)
ORDER 1971

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 8th day of February 1971

Present:

THE RIGHT HON. J. R. MARSHALL PRESIDING IN COUNCIL

PURSUANT to section 470 of the Companies Act 1955, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ORDER

1. Title—This order may be cited as the Companies (Overseas Companies' Accounts) Order 1971.

2. Interpretation—In this order, unless the context otherwise requires,—

“The Act” means the Companies Act 1955:

“Affected company” means an overseas company to which sections 395 to 406 of the Act apply, being a company which is not exempted from the requirements of subsection (2) of section 402 of the Act pursuant to subsection (6) of that section or pursuant to section 6 of the Companies Amendment Act 1969:

“Overseas company” includes any bank that is incorporated outside New Zealand:

“Required accounts” means the accounts which are required to be prepared and filed by affected companies under subsection (2) of section 402 of the Act:

“The Schedule” means the Eighth Schedule to the Act.

3. Application of Orders in Council to affected companies—Where any affected company is entitled to the benefit of any Order in Council for the time being in force made under any provision of the Act, whether before or after the commencement of this order, that benefit shall not extend to required accounts, unless, and to the extent that, the order expressly so provides.

4. Application of Eighth Schedule to required accounts—In the application of the Schedule to required accounts, the Schedule shall be read subject to the provisions of this order.

5. Interpretation of Eighth Schedule—For the purposes of applying the Schedule to required accounts, the following expressions shall be construed as follows:

- (a) The expression “assets” includes all property both real and personal of an affected company which is situated in New Zealand, or, not being so situated, has been acquired principally in connection with or in the course of the business conducted in or from New Zealand by the affected company; but need not include shares in any company incorporated in New Zealand which is a subsidiary of any affected company or in which the affected company holds 25 percent or more of the voting shares:
- (b) The expression “company” means an affected company:
- (c) The expression “deemed capital” means the difference between total assets and total liabilities of an affected company subject to the inclusion of any provisions as defined in this paragraph:
- (d) The expression “liabilities” includes all debts or other obligations of an affected company, whether arising inside or outside New Zealand, which are undertaken or incurred principally in connection with, or which arise from the course of, business conducted in or from New Zealand by the affected company:
- (e) The expression “provisions” means such amounts as are written off or retained by way of providing for the diminution of “assets” as above defined or for providing for any known “liability” as above defined. Except as provided in this paragraph nothing in this order shall derogate from the provisions of paragraph 2 of the Schedule so far as that paragraph relates to provisions.

6. Application of paragraphs 6 and 7 of Schedule—Paragraphs 6 and 7 of the Schedule shall not apply in so far as they refer to capital and revenue reserves.

7. Paragraph 8 of Schedule substituted—Paragraph 8 of the Schedule shall not apply, and the following provision shall have effect in its stead:

“8. (1) The assets and liabilities shall be summarised with such particulars as are necessary to disclose their general nature.

“(2) The deemed capital shall be shown under a separate heading, suitably named, and there shall be specified under that heading—

“(a) The balance carried forward from the accounts for the previous accounting period:

“(b) The net amount of profit (or loss) brought forward from the profit and loss account, not being of a capital nature, which is attributable to the business, operations, or undertaking of the affected company conducted in or from New Zealand during the accounting period to which the accounts relate:

“(c) The net amount of profit (or loss) of a capital nature (including that arising on a revaluation of assets) accruing to the business, operations, or undertaking of the affected company conducted in or from New Zealand during the accounting period to which the accounts relate:

- “(d) The aggregate amount of any accumulated profits not retained in New Zealand for use in connection with the business, operations, or undertaking of the affected company conducted in or from New Zealand during the accounting period to which the accounts relate:
- “(e) The net amount of all other transactions not elsewhere brought to account during the accounting period to which the accounts relate.”

8. Modification of paragraph 9 of Schedule—Paragraph 9 of the Schedule shall be read subject to the following modifications:

- (a) Subclauses (2) and (3) of that paragraph shall not apply;
- (b) Subclause (9) shall not apply, and the following subclause shall have effect in its stead:
- “(9) Except in the case of the first balance sheet required to be filed after the commencement of the Companies (Overseas Companies' Accounts) Order 1971, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.”

9. Modification of paragraph 10 of Schedule—Paragraph (d) of paragraph 10 of the Schedule shall not apply.

10. Modification of paragraph 12 of Schedule—Paragraphs (b) to (e) of subclause (1) of paragraph 12 of the Schedule shall not apply.

11. Modification of paragraph 13 of Schedule—(1) Paragraphs (e) and (f) of subclause (1) of paragraph 13 of the Schedule shall not apply.

(2) In addition to the matters required to be shown pursuant to paragraph 13 of the Schedule, there shall also be separately shown the aggregate amount (if any) of charges against the business, operations, or undertaking of the affected company in New Zealand in respect of administration, supervision, or similar services not performed in New Zealand but which have been allocated in the books of the affected company, or of any company which is an associated person in relation to the affected company pursuant to section 3A of the Land and Income Tax Act 1954 (as inserted by section 5 of the Land and Income Tax Amendment Act 1968), to the account of the business, operations, or undertaking conducted in or from New Zealand by the affected company.

12. Paragraph 14 of Schedule not to apply—Paragraph 14 of the Schedule shall not apply.

13. Modification of paragraph 15 of Schedule—Subclause (3) of paragraph 15 of the Schedule shall not apply, and the following shall have effect in its stead:

“(3) Except in the case of the first profit and loss account required to be filed after the commencement of the Companies (Overseas Com-

panies' Accounts) Order 1971, the corresponding amounts for the immediately preceding year for all items shown in the profit and loss account."

14. Provisions where company is a holding or subsidiary company—

(1) Part II of the Schedule shall not apply to required accounts.

(2) There shall be added as a note to the balance sheet of an affected company the name of every company incorporated in New Zealand in which the affected company holds 25 percent or more of the voting shares, and the name of every company incorporated in New Zealand which is a subsidiary of the affected company.

P. J. BROOKS,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the order, but is intended to indicate its general effect.

This order alters the requirements of the Companies Act 1955 as to the matters to be stated in the balance sheet and profit and loss accounts of overseas companies for the purpose of giving full effect to the provisions of section 402 (2) of that Act, which requires overseas companies having an established place of business in New Zealand to file annual accounts with the Registrar.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 11 February 1971.
This order is administered in the Department of Justice.