

1967/11



**THE CAPITAL ISSUES (FINANCE COMPANIES)
REGULATIONS 1967**

—
BERNARD FERGUSSON, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 10th day of
February 1967

Present:

THE RIGHT HON. KEITH HOLYOAKE, C.H., PRESIDING IN COUNCIL

PURSUANT to the Reserve Bank of New Zealand Act 1964, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Capital Issues (Finance Companies) Regulations 1967.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“Finance company” means any company, society, or association, whether incorporated or not, engaged in the business of investing borrowed money; and includes any person who holds himself out as carrying on the business of accepting money on deposit for investment:

“Investment”, or “investing”, means—

(a) The lending of money, with or without security (not being the giving of credit in the course of a bona fide mercantile current account); or

(b) The financing or discounting of hire purchase agreements or credit sale agreements within the meaning of the Hire Purchase and Credit Sales Stabilisation Regulations 1957*; or

*S.R. 1957/170 (Reprinted with Amendments Nos. 1–5: S.R. 1963/149)

Amendment No. 6: S.R. 1963/226

Amendment No. 7: S.R. 1964/41

Amendment No. 8: (*Revoked by S.R. 1965/144*)

Amendment No. 9: S.R. 1965/76

Amendment No. 10: S.R. 1965/144

Amendment No. 11: S.R. 1966/29

Amendment No. 12: S.R. 1966/214

(c) The paying of sums as consideration for the assignment, to the payer, of debts or other obligations owing or due to the person to whom the consideration is paid; or

(d) The purchasing of goods (being any kind of movable personal property) for the purpose of entering into agreements for the bailment of those goods under which the bailee will have the right to their exclusive possession for any period exceeding three months:

“Issue” includes re-issue:

“Minister” means the Minister of Finance; and includes any person for the time being authorised to exercise or perform any of the powers or functions of the Minister:

“Person” includes a corporation sole and also a body of persons whether incorporated or not:

“Securities” includes shares, stock, bonds, debentures, debenture stock, deposit notes, and any other document or means whereby the right to the ownership or provision of any money or security, or any interest therein, may be exercised:

“Shares” includes stock, and any perpetual debenture or perpetual debenture stock.

(2) Any reference in these regulations to the borrowing of money includes a reference to the acceptance of money on deposit or by way of loan.

(3) Any reference in these regulations to the borrowing of money includes a reference to the making of any arrangement by which a sum that would otherwise be payable at any date is payable at a later date; and in particular includes a reference to the making of any arrangement by which the whole or any part of the price of any property is allowed to remain unpaid either for a fixed period or indefinitely.

(4) For the purposes of subclause (3) of this regulation—

(a) An arrangement to provide any guarantee or to mortgage or charge any property to secure the repayment of any sum borrowed before the arrangement is made, being a sum which is already due when the arrangement is made or which is payable not later than six months after the arrangement is made, shall be deemed to be an arrangement by which that sum is payable at a date later than that on which it would otherwise have been payable:

(b) A sum which at the time of or by virtue of the making of any arrangement is payable on demand or on the expiration of a fixed period after demand shall be deemed to be payable at the time of the making of the arrangement or, as the case may require, on the expiration of the fixed period after the making of the arrangement, notwithstanding that no demand has been made.

(5) For the purposes of these regulations, a finance company shall be deemed to borrow money in New Zealand if—

(a) The money is borrowed in New Zealand on the security of property outside New Zealand; or

- (b) The finance company sells any land or interest in land, whether within or outside New Zealand, on terms providing a right for the vendor or any nominee of the vendor to continue in possession or to resume or take possession of the land or any part thereof (whether under a lease or otherwise) and also providing a right for the vendor or any nominee of the vendor to repurchase the land or any part thereof.

(6) Nothing in the foregoing provisions of this regulation shall be construed to limit the generality of any references in these regulations to the borrowing or raising of money.

(7) If with respect to any company, society, association, or person any question arises as to whether it or he is properly classifiable as a finance company, the question shall be determined by the Minister of Finance, whose decision shall be final.

3. Borrowing or raising money by finance companies—(1) Except with the consent of the Minister, it shall not be lawful—

- (a) For any finance company, or any person acting as trustee or agent for or on behalf of any finance company, to borrow money in New Zealand; or
- (b) For any finance company to raise money in New Zealand by the issue, whether in New Zealand or elsewhere, of any shares in the finance company; or
- (c) For any finance company to make any call in respect of shares issued by the finance company in New Zealand.

(2) Nothing in this regulation shall prevent or affect in any way any transaction in respect of—

- (a) An advance made by the Reserve Bank of New Zealand or by any trading bank within the meaning of the Reserve Bank of New Zealand Act 1964; or
- (b) A deposit or loan accepted in good faith and in the ordinary course of business by—
- (i) A trading bank within the meaning of the Reserve Bank of New Zealand Act 1964; or
 - (ii) A trustee savings bank constituted under the Trustee Savings Banks Act 1948; or
 - (iii) A private savings bank within the meaning of the Private Savings Banks Act 1964; or
 - (iv) A building society within the meaning of the Building Societies Act 1965; or
 - (v) A person for the time being authorised by the Reserve Bank of New Zealand to receive money on deposit as a short-term money market dealer.

(3) Nothing in this regulation shall apply to any transaction entered into by or in respect of any finance company if the amount borrowed or raised, or, as the case may be, the amount called up, in that transaction, together with the total of all other amounts borrowed, raised, or called up by or in respect of the finance company in all other transactions to which this regulation applies within one year immediately preceding the first-mentioned transaction, does not exceed £1,000.

4. Issue of prospectus, etc.—It shall not be lawful for any person to issue, for circulation in New Zealand, any prospectus or other document offering for subscription or publicly offering for sale any shares in or securities of any finance company, unless the prospectus or document includes a statement that the consent of the Minister has been obtained under these regulations or, as the case may require, that the consent of the Minister is not required under these regulations.

5. Validity of transactions—A transaction to which these regulations apply shall not be invalid by reason of the fact that the consent of the Minister has not been given thereto; but nothing in this regulation shall be construed as affecting or modifying the liability of any person to any penalty in respect of any failure to obtain such consent.

6. Delegation of Minister's powers—(1) The Minister may from time to time, by writing under his hand, delegate to the Secretary to the Treasury or any other person any of his powers under these regulations.

(2) Any delegation under this regulation may be made to a specified person or to persons of a specified class, or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a specified class.

(3) Any such delegation may be made subject to such conditions and restrictions as the Minister thinks fit, and may be made either generally or in relation to any particular matter or class of matters.

(4) Subject to any general or special directions given or conditions or restrictions imposed by the Minister, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by these regulations and not by delegation.

(5) Every person purporting to act pursuant to any delegation under this regulation shall be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.

(6) The delegation of any power by the Minister shall not prevent the exercise of that power by the Minister.

(7) Any delegation under this regulation may be revoked at any time.

(8) Until it is revoked, every such delegation shall continue in force according to its tenor, notwithstanding the fact that the Minister by whom it was made may have ceased to hold office, and notwithstanding (in the case of a delegation to the Secretary to the Treasury) that the Secretary to whom it was made may have ceased to hold office; and in any such case the delegation shall continue in force as if made by or to the successor in office of the Minister or the Secretary, as the case may be.

7. Granting or refusal of consent—(1) Any consent for the purposes of these regulations may—

(a) Be granted in respect of such transactions or class or classes of transactions or of persons as the Minister may determine, or to any person in respect of any specified transaction:

(b) Be granted wholly or partly and either unconditionally or subject to such conditions as the Minister thinks fit:

(c) Be refused.

(2) Any consent granted under these regulations may at any time be revoked by the Minister (whether or not he granted it) or by the other person (if any) by whom it was granted; and any condition subject to which any such consent is granted may from time to time be revoked, varied, or added to by the Minister or by the other person (if any) who granted it.

(3) Every person who applies to the Minister or to any other person for any consent under these regulations shall furnish such information and particulars and in such form as the Minister or that other person may from time to time require.

8. Notices—(1) The Minister may give notice in the *Gazette* of the exercise of any of his powers under these regulations, or of any direction or determination given or made by him under these regulations, and all persons shall be bound thereby.

(2) The Minister may, without any notice in the *Gazette*, give notice to any person of the exercise of any of his powers under these regulations, or of any direction or determination given or made by him under these regulations, and every person to whom the notice is given shall be bound thereby.

(3) Except where otherwise specially provided, any notice required to be given to any person for the purposes of these regulations may be given by causing it to be delivered to that person, or to be left at his usual or last known place of abode or business or at the address specified by him in any application, notice, or other document received from him by the Minister or the Secretary to the Treasury, or to be posted in a letter addressed to him at that place of abode or business or at that address.

(4) If any such notice is sent to any person by registered letter it shall be deemed to have been delivered to him when it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

(5) Except where otherwise specially provided, every notice under these regulations shall take effect when it is published or given, or at such later time as may be specified in that behalf in the notice.

(6) Any notice given under these regulations may at any time be varied or revoked by a subsequent notice.

9. Supply of information—(1) For the purposes of these regulations, the Minister may from time to time, by notice in writing to any finance company, or by notice in the *Gazette* applying to finance companies or any specified class of finance companies, require such company or companies to supply to the Minister or as he directs such returns or information relating to matters to which these regulations apply, including the investment of money borrowed or raised or resulting from calls made, as may be specified in the notice.

(2) No finance company shall be required under this regulation to supply any information with respect to the identity or affairs of any particular person from whom the finance company has accepted any money or with or in respect of whom the company has made any investment.

10. Production of books, etc.—If the Minister has reason to suspect that any finance company has committed an offence against these regulations, he may, by notice in writing to the finance company, require the finance company to produce to the Minister or as he directs any books or documents that may be in the possession or under the control of the finance company and that in his opinion may furnish evidence in relation to that offence.

11. Capital Issues (Overseas) Regulations not affected—Nothing in these regulations shall limit or affect the operation of the Capital Issues (Overseas) Regulations 1965*:

Provided that where the Minister has consented to any transaction under these regulations, and the transaction is such that the consent of the Minister thereto is also required under regulation 3A of the Capital Issues (Overseas) Regulations 1965 (as enacted by regulation 2 of the Capital Issues (Overseas) Regulations 1965, Amendment No. 1), the consent given under these regulations shall be deemed to have been given also under the said regulation 3A.

12. Offences—Every person commits an offence, and shall be liable accordingly under section 52 of the Reserve Bank of New Zealand Act 1964, who—

- (a) With intent to deceive, makes any false or misleading statement or any material omission in any declaration made for the purposes of these regulations or in any communication with or application to the Minister or any other person (whether in writing or otherwise) for the purposes of these regulations:
- (b) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under these regulations:
- (c) Without lawful excuse, acts in contravention of or fails to comply in any respect with any provision of these regulations or any direction, notice, requirement, or condition given or imposed under these regulations.

T. J. SHERRARD,
Clerk of the Executive Council.

*S.R. 1965/157
Amendment No. 1: S.R. 1966/96

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

Regulation 3 (1) of these regulations provides that, except with the consent of the Minister of Finance, it is not lawful for a finance company, or any trustee or agent for a finance company, to borrow money in New Zealand, or for a finance company to raise money in New Zealand by the issue of shares in New Zealand or elsewhere, or to make any call on shares issued in New Zealand. This provision is subject to the exemptions mentioned below.

“Finance company” is defined in regulation 2 (1) as a company, society, or association, whether incorporated or not, engaged in the business of investing borrowed money. It includes a person who holds himself out as carrying on the business of accepting money on deposit for investment. “Investment” and “investing” mean the lending of money (other than the giving of credit in a

bona fide mercantile current account), the financing or discounting of hire-purchase agreements or credit sale agreements, the purchase of debts or other obligations, and the purchase of goods for the purposes of any bailment under which the bailee will have the right to exclusive possession for more than 3 months.

Regulation 3 (2) (a) exempts transactions in respect of advances made by the Reserve Bank or by trading banks.

Regulation 3 (2) (b) exempts transactions in respect of deposits or loans accepted in good faith and in the ordinary course of business by trading banks, trustee and private savings banks, building societies, and short-term money market dealers.

Regulation 3 (3) gives a general exemption for all transactions not amounting in the aggregate to more than £1,000 in any period of one year.

Regulation 4 forbids the issue of any prospectus or other document offering shares or securities of a finance company for subscription or public sale unless it states either that the Minister's consent has been obtained under these regulations or that such consent is not required.

Regulation 5 preserves the validity of transactions entered into without the required consent.

Regulation 6 deals with the delegation of the Minister's powers.

Regulation 7 deals with the granting or refusal of consent.

Regulation 8 deals with the giving of notices.

Regulation 9 authorises the Minister to require finance companies to supply returns or information for the purposes of the regulations.

Regulation 10 authorises the Minister, if he has reason to suspect that a finance company has committed an offence against the regulations, to require the finance company to produce books or documents that may furnish evidence in relation to the offence.

Regulation 11: The Capital Issues (Overseas) Regulations 1965 must also be complied with where necessary; but where consent to the same transaction is required under those regulations as well as these a consent given under these is sufficient.

Regulation 12 deals with offences and penalties. The maximum penalties under section 52 of the Reserve Bank of New Zealand Act 1964 are imprisonment for 12 months or a fine of £1,000 for an individual, or a fine of £2,000 for a body corporate, with provision for further fines for continuing offences.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 10 February 1967.

These regulations are administered in the Treasury.