

1972/115



**THE COMPANIES (LIMITATION OF DISTRIBUTIONS)
REGULATIONS 1972**

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 6th day of June 1972

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Economic Stabilisation Act 1948, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title—These regulations may be cited as the Companies (Limitation of Distributions) Regulations 1972.

2. Commencement and expiry—(1) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

(2) These regulations shall continue in force until the close of the 27th day of March 1973, and shall then expire.

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

“Capital”, in relation to a private company, means the share capital of the company and, in relation to any other company, means the issued and allotted capital of the company, irrespective, in both cases, of the amount paid up on any share:

“Company” means a company formed and registered under the Companies Act 1955, or an existing company as defined in that Act:

“Distribution”, in relation to a company, means—

(a) The declaration or payment of a dividend by that company:

(b) Any distribution made by that company to its members which is, or is equivalent to, a return of share capital or constitutes a return to shareholders of premiums paid to the company in respect of the issue of share capital by the company:

(c) Any application by that company of money held in a share premium account or a capital redemption reserve fund in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares:

“Dividend year” means the period of 12 months ending with the 27th day of March:

“Rate of dividend” means the dividend declared or paid on any share in the capital of a company determined as a proportion of the amount paid or credited as paid on that share:

“Share” includes stock.

(2) For the purposes of these regulations and for the avoidance of doubt, it is hereby declared that the distribution by a company of any of its profits (including capital profits and capitalised profits) to all or any of its shareholders as such shall constitute the payment of a dividend by that company irrespective of the means used to effect that distribution and whether or not the distribution involves the issue or allocation of bonus shares or debentures.

4. Administration of regulations—The powers and functions of the Minister under these regulations and any powers or functions which the Minister may exercise under the Act for the purposes of those regulations shall be exercised by the Minister of Finance.

5. Limitation of distributions—Except as provided in regulations 7 and 8 of these regulations or with the consent of the Minister, no company shall make any distribution.

6. Granting or refusal of consent—(1) Any consent for the purposes of regulation 5 of these regulations may—

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

(b) Be refused.

(2) Any condition subject to which any such consent is granted may from time to time, at any time before any distribution is made pursuant to the consent, be revoked, varied, or added to by the Minister.

7. Excepted dividends—The consent of the Minister shall not be required under regulation 5 of these regulations to the declaration or payment by a company of a dividend in respect of any share forming part of its capital (other than a share that has been allotted or is deemed to have been allotted since the 27th day of March 1972) if that dividend, together with any other dividend declared or paid by the company in respect of that share in the dividend year ending with the 27th day of March 1973, does not exceed the greater of—

(a) The rate of dividend paid by the company in respect of that share in the immediately preceding dividend year; or

(b) The rate of dividend obtained by averaging the rates of dividend paid by the company in respect of that share in each of the 3 immediately preceding dividend years.

8. New companies—The consent of the Minister shall not be required under regulation 5 of these regulations to the declaration or payment by a company, in the dividend year ending with the 27th day of March 1973, of a dividend in respect of any share forming part of its capital if—

- (a) That dividend, together with any other dividend declared or paid by the company in respect of that share in that dividend year, does not exceed, in rate of dividend, 5 percent; and
- (b) The company has never declared or paid a dividend in respect of that share before the 28th day of March 1972; and
- (c) The company was incorporated on or after the 28th day of March 1972 or had been incorporated for less than 12 months at that date.

9. Evasion of regulations—No person shall enter into any transaction or make any contract or arrangement, whether orally or in writing, for the purpose of or having the effect of, in any way, directly or indirectly, defeating, evading, or circumventing the operation of these regulations in any respect.

10. Revocation and saving—(1) The Limitation of Dividends Regulations 1972* are hereby revoked.

(2) All consents given under those regulations and in force at the time of the revocation effected by this regulation shall continue and have effect as if they had been given under the corresponding provision of these regulations and as if that provision had been in force when the consent was given.

(3) All applications for the consent of the Minister made under the Limitation of Dividends Regulations 1972, but not determined at the commencement of these regulations, shall be deemed to have been made under these regulations and shall be dealt with accordingly.

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

*S.R. 1972/62

EXPLANATORY NOTE

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

These regulations replace the Limitation of Dividends Regulations 1972. These regulations are wider in their scope. They limit, until the close of the 27th day of March 1973, the distributions that may be made by companies to their shareholders. The existing regulations apply only to the distribution of profits by way of dividends and by certain other methods such as bonus issues. It is an offence against section 18 of the Economic Stabilisation Act 1948 to act in contravention of the provisions of these regulations.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 8 June 1972.

These regulations are administered in the Reserve Bank of New Zealand.