



THE EXCHANGE CONTROL REGULATIONS 1985

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 17th day
of January 1985

Present:

THE HON. G. W. R. PALMER 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 Exchange Control Regulations 1985.

(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,—

“The Act” means the Reserve Bank of New Zealand Act 1964:

“Authorised foreign exchange dealer” means a person named in the First Schedule to these regulations:

“Foreign currency” means the bank notes or other currency, postal notes, or money orders of any country other than New Zealand; and includes promissory notes and bills of exchange payable otherwise than in New Zealand currency:

“Foreign securities” means—

(a) Any security in respect of which the principal is repayable, or interest is payable, in any country other than New Zealand, or in any foreign currency; and

(b) Any security registered or inscribed or situated outside New Zealand; and

(c) Any security issued by a body corporate having its head office outside New Zealand, whether or not the security is registered or inscribed on a register in New Zealand— and includes—

(d) Gold situated outside New Zealand; and

(e) Any debt or money due or accruing due to, or any sum held in any account for, a person in New Zealand by a person outside New Zealand; and

(f) Any right to receive payment of any sum of money in any country other than New Zealand; and

(g) Any right to receive payment of any amount of foreign currency:

“Gold” includes gold coin, gold bullion, retorted gold, gold ores, gold amalgam, gold alloys, precipitates containing gold, slag, concentrates, tailings, and residues; but, with the exception of gold coin, does not include things manufactured of gold:

“Issue” includes re-issue:

“Minister” means the Minister of Finance; and, in relation to any particular function, duty, or power of the Minister, includes any person for the time being authorised to exercise or perform that function, duty, or power:

“Money” includes the bank notes and other currency, postal notes, and money orders of New Zealand or any other country; and also includes promissory notes and bills of exchange:

“Owner”, in relation to any security, includes any person who is registered as the proprietor or holder of the security, or who has power to sell or transfer the security, or who has the custody thereof, or who receives or is entitled to receive (whether on his own behalf or on behalf of any other person) dividends or interest thereon, or who has any other legal, equitable, or beneficial interest therein, or who is entitled to control the disposition of the security or any part thereof or of any dividends or interest thereon; and “owns” and “owned” have corresponding meanings:

“Person” includes any individual person, a corporation sole, a corporation aggregate, and any association or combination of individual persons or corporate or unincorporate bodies:

“Register” includes any book or form of record in which securities are registered or inscribed:

“Reserve Bank” means the Reserve Bank of New Zealand constituted under the Act:

“Securities” includes shares, stock, bonds, debentures, debenture stock, mortgages, liens, treasury bills, coupons or warrants representing dividends or interest, and life or endowment insurance policies, in whatever currency the securities are expressed and whether they are situated in New Zealand or elsewhere; and also includes any document or means whereby the right to the ownership or provision of any money or security, or any interest therein, may be exercised; but does not include promissory notes or bills of exchange:

“Trading bank” means any bank named in the First Schedule to the Act.

(2) Any reference in these regulations to the transfer of any security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.

(3) In these regulations, unless the context otherwise requires, a person is a nominee of another person in respect of any matter if he acts in any way on behalf of, or is in any way subject to the direction, control, or influence of, that other person, or a nominee of that other person, in respect of that matter (whether or not the relationship between him and the other person, or the nominee of the other person, is such as to confer legally enforceable rights on any party to the matter).

(4) For the purposes of these regulations an individual shall be deemed to be ordinarily resident in New Zealand at any time if—

- (a) He is domiciled in New Zealand at that time; or
- (b) He is residing in New Zealand at that time and his usual place of abode is, and has been for the immediately preceding period of 12 months, in New Zealand, whether or not he has been occasionally or temporarily absent from New Zealand during that period; or
- (c) The Minister has determined that he is deemed to be so resident pursuant to section 28 (6A) of the Act, and has not revoked that determination.

(5) For the purposes of these regulations—

- (a) A body corporate shall be deemed to be ordinarily resident in New Zealand if it is incorporated in New Zealand or has its head office in New Zealand; and “head office”, in relation to a body corporate, means the centre of its administrative management;
- (b) Where any body corporate incorporated outside New Zealand and carrying on business through a branch or branches in New Zealand does not have its head office in New Zealand, each such branch shall be deemed to be a separate person and shall, together with the person in New Zealand for the time being having control of the business in New Zealand, be deemed to be ordinarily resident in New Zealand, and such persons shall in respect of the branch be jointly and severally liable accordingly; but nothing in this paragraph shall be construed to relieve the body corporate from any obligation or liability to any penalty under the Act or under these regulations.

3. Transactions involving exchange of foreign currency for New Zealand money—(1) Subject to subclause (2) of this regulation, except with the consent of the Reserve Bank, no person shall be a party to any transaction whereby foreign currency is exchanged for New Zealand money otherwise than through any trading bank or authorised foreign exchange dealer.

(2) Nothing in subclause (1) of this regulation applies to the purchase in New Zealand by a person ordinarily resident in New Zealand from a person not ordinarily resident in New Zealand of any foreign currency if the foreign currency is forthwith sold for New Zealand money to any trading bank or authorised foreign exchange dealer.

4. Control of non-resident accounts—(1) In this regulation, the expression “non-resident account” means an account kept in New Zealand in the name, or directly or indirectly for the benefit, of any person, or any 2 or more persons, if that person or any of those persons is—

- (a) Not ordinarily resident in New Zealand; or
- (b) A trustee for or a nominee or agent of any person not ordinarily resident in New Zealand.

(2) The Reserve Bank may from time to time declare any specified non-resident account, or non-resident accounts of any specified class or classes, or non-resident accounts kept by any specified person or class of persons, to be a controlled account or controlled accounts for the purposes of this regulation; and may at any time revoke, vary, or add to any such declaration.

(3) Every person who keeps (whether on his own behalf or on behalf of another person) a non-resident account that is declared to be a controlled account under this regulation shall—

- (a) Forthwith after the declaration, inform the Reserve Bank of the existence of the account; and
- (b) If required to do so by the Reserve Bank by notice in writing, furnish or produce to the Reserve Bank within such time as may be specified in the notice such information, books, and documents relating to the account that are in his possession or under his control, as the Reserve Bank requires.

(4) Where any non-resident account is declared to be a controlled account under this regulation, and so long as the declaration continues in force, it shall not be lawful for any person to make any entry in the account except with the consent of the Reserve Bank and to the extent of such consent.

5. Dealings with foreign currency and foreign securities—(1) In this regulation, “foreign assets” means—

- (a) Any foreign currency;
- (b) Any rights to receive outside New Zealand in respect of any credit or balance at a bank or with any other person payment of any amount in a foreign currency;
- (c) Any money on deposit at a bank or with any other person which is repayable in a foreign currency;
- (d) Any foreign securities.

(2) Except with the consent of the Reserve Bank, no trading bank or authorised foreign exchange dealer or other person shall sell, transfer, or do any thing which involves the creation of a charge on any foreign asset, or any legal or equitable interest therein, owned by a trading bank or authorised foreign exchange dealer.

(3) The Minister may from time to time by notice—

- (a) Require any trading bank or authorised foreign exchange dealer to furnish to the Minister, or as he directs, such information and particulars in relation to any foreign asset, or any legal or equitable interest therein, owned by that trading bank or authorised foreign exchange dealer, as the Minister requires:

(b) Require every person or any specified person who holds on behalf of a trading bank or authorised foreign exchange dealer (whether as trustee, agent, bailee, mortgagee, or otherwise) any foreign assets, or any legal or equitable interest therein, to furnish to the Minister, or as he directs, such information and particulars in relation thereto, as the Minister requires.

(4) Where any notice is given under subclause (3) (a) of this regulation to any trading bank or authorised foreign exchange dealer or under subclause (3) (b) of this regulation to any specified person, as the case may be, the trading bank, or authorised foreign exchange dealer or specified person shall, within 14 days after the notice is given, or within such further period as may be specified in the notice, furnish to the Minister, or as he directs, the information required by the notice.

(5) Where any notice is given under subclause (3) (b) of this regulation otherwise than to a specified person, every person to whom the notice applies shall, within 14 days (or such further period as may be specified in the notice) after the date of the giving of the notice or, as the case may be, the date on which he becomes the holder, on behalf of any trading bank or authorised foreign exchange dealer, of any foreign assets or any legal or equitable interest therein (whichever date is later), furnish to the Minister, or as he directs, the information required by the notice.

(6) All foreign assets and any legal or equitable interest therein held by any trading bank or authorised foreign exchange dealer on account of, or acquired by it in respect of, its New Zealand business shall be held by it subject to such directions as to their disposal as may from time to time be given by the Reserve Bank; and no trading bank or authorised foreign exchange dealer shall sell any such assets or any legal or equitable interest therein for valuable consideration in New Zealand without the consent of the Reserve Bank.

6. Delegation by Minister and Reserve Bank—(1) The Minister may from time to time, by writing under his hand, delegate to the Reserve Bank or any other person any of his powers under these regulations (including this power of delegation).

(2) The Reserve Bank may from time to time delegate to any person any of the powers or functions conferred on it by these regulations.

(3) Any delegation 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.

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

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

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

(7) The delegation of any power or function shall not prevent the exercise of that power or function by the Minister or, as the case may require, the Reserve Bank.

(8) Any such delegation may be revoked at any time.

(9) Until it is revoked, every such delegation shall continue in force according to its tenor, notwithstanding the fact that the Minister or other person by or 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 that person, 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, assets, securities, currencies, or money or class or classes of transactions, assets, securities, currencies, or money, or of persons, as the Reserve Bank may determine, or to any person in respect of any specified transaction, asset, security, currency, or money:

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

(c) Be refused.

(2) Any consent granted under these regulations (whether before or after the commencement of this regulation) may at any time be revoked by the Reserve Bank (whether or not the Reserve Bank granted it) or by the other person (if any) by whom it was granted; and any condition subject to which any such consent is or has been granted may from time to time be revoked, varied, or added to by the Reserve Bank or by the other person (if any) by whom it was granted.

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

8. Exemptions—(1) The Minister may from time to time grant exemptions from the application of any of the provisions of these regulations.

(2) Any exemption for the purposes of these regulations may—

(a) Be granted in respect of such transactions, assets, securities, currencies, or money, or class or classes of transactions, assets, securities, currencies, or money, or of persons, as the Minister may determine, or to any person in respect of any specified transaction, asset, security, currency, or money:

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

(c) Be refused.

(3) Any exemption 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 exemption 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.

(4) Every person who applies to the Minister or to any other person for any exemption 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.

9. Notices—(1) The Minister or, as the case may require, the Reserve Bank may give notice in the *Gazette* of the exercise of any of his or its powers or functions under these regulations, or of any direction or determination given or made by him or it under these regulations, and all persons shall be bound thereby.

(2) The Minister or, as the case may require, the Reserve Bank may, without any notice in the *Gazette*, give notice to any person of the exercise of any of his or its powers or functions under these regulations, or of any direction or determination given or made by him or it 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 Reserve Bank, 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.

10. Power of Minister to require information or production of books, etc.—(1) If the Minister has reason to suspect that any person has committed an offence or offences against these regulations, he may, by notice in writing, require that person or any other person, within such time as may be specified in the notice—

(a) To furnish to the Minister or as he directs any information, in relation to any transaction, which in the Minister's opinion may furnish evidence in relation to the offence or offences:

(b) To produce to the Minister or as he directs any books or documents which are in the possession or under the control of any such person and which in the Minister's opinion may furnish evidence in relation to the offence or offences.

(2) Any notice given pursuant to regulation 5 (3) of these regulations or to subclause (1) of this regulation may specify the place or places at which any information, books, or documents are to be furnished or produced; and any books or documents may be copied, and may be retained or impounded, by the person or persons to whom they are produced pursuant to the notice.

11. Overseas Investment Regulations not affected—Nothing in these regulations shall limit or affect the operation of the Overseas Investment Regulations 1974.

12. Offences—Under section 51 of the Act, every person commits an offence against the Act who—

(a) With intent to deceive, makes any false or misleading statement or any material omission in any offer or declaration made for the

purposes of these regulations or in any communication with or application to the Minister or the Reserve Bank 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;—

and is accordingly liable, on conviction on indictment, to the penalties specified in section 52 of the Act.

13. Revocations—The regulations specified in the Second Schedule to these regulations are hereby revoked.

SCHEDULES

FIRST SCHEDULE

Regs. 2, 3, 5

AUTHORISED FOREIGN EXCHANGE DEALERS

Barclays New Zealand Limited
 Broadbank Corporation Limited
 Citicorp Forex Limited
 Development Finance Corporation of New Zealand
 Hill Samuel New Zealand Limited
 Indosuez New Zealand Limited
 Marac Corporation Limited
 Natwest Lombank (New Zealand) Limited
 N.Z.I. Securities Limited
 South Pacific Merchant Finance Limited
 Wardley New Zealand Limited

SECOND SCHEDULE

Reg. 13

REGULATIONS REVOKED

Title	Serial Number
The Exchange Control Regulations 1978	1978/61
The Exchange Control Regulations 1978, Amendment No. 1	1980/104
The Exchange Control Regulations 1978, Amendment No. 2	1983/140
The Exchange Control Regulations 1978, Amendment No. 3	1983/273
The Exchange Control Regulations 1978, Amendment No. 4	1984/7
The Exchange Control Regulations 1978, Amendment No. 5	1984/133
The Exchange Control Regulations 1978, Amendment No. 6	1984/177

P. G. MILLEN,
 Clerk of the Executive Council.

EXPLANATORY NOTE

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

These regulations, which come into force on the day after the date of their notification in the *Gazette*, replace the Exchange Control Regulations 1978. The effect of these regulations, in general terms, is to remove many of the restrictions applying to transactions and dealings with foreign exchange, the sending of currency and securities overseas and certain other matters under the Exchange Control Regulations 1978.

Regulation 2 relates to the definition of terms used in the regulations.

Regulation 3 provides that, except with the consent of the Reserve Bank, no person shall be a party to a transaction whereby foreign currency is exchanged for New Zealand money otherwise than through a trading bank or an authorised foreign exchange dealer (as that term is defined). Nothing in the regulation applies to the purchase in New Zealand by a person ordinarily resident in New Zealand from a person not ordinarily resident in New Zealand of foreign currency if it is forthwith sold for New Zealand money to a trading bank or authorised foreign exchange dealer. This regulation re-enacts regulation 3 (1) (i) of the previous regulations and incorporates the exemption from that provision granted by clause 9 of the Exchange Control Exemption Notice 1978.

Regulation 4, which relates to the control of non-resident accounts, is the same as regulation 6 of the previous regulations.

Regulation 5 is in substantially the same terms as regulation 8 of the previous regulations. It provides that, except with the consent of the Reserve Bank, no trading bank, authorised foreign exchange dealer, or other person shall sell, transfer, or do any thing which involves the creation of a charge on foreign assets (as that term is defined) owned by a trading bank or authorised foreign exchange dealer or any legal or equitable interest in such foreign assets.

Regulation 6, which relates to powers of delegation, is the same as regulation 11 of the previous regulations.

Regulation 7, which relates to consents, is the same as regulation 12 of the previous regulations.

Regulation 8, which relates to the granting of exemptions, is the same as regulation 13 of the previous regulations.

Regulation 9, which relates to the giving of notices, is the same as regulation 14 of the previous regulations.

Regulation 10, which authorises the Minister of Finance to require information or books and documents, is the same as regulation 15 of the previous regulations.

Regulation 11 provides that nothing in the regulations limits or affects the Overseas Investment Regulations 1974 and is the same as regulation 16 of the previous regulations.

Regulation 12, which relates to offences, is the same as regulation 17 of the previous regulations.

Regulation 13 revokes the Exchange Control Regulations 1978 and amendments.

The provisions of the previous regulations which have not been re-enacted are—

- (a) Regulation 3 (except regulation 3 (1) (i)), which related to transactions affecting overseas exchange;
- (b) Regulation 4, which required travellers leaving New Zealand to make a declaration regarding money and securities being taken overseas and conferred certain powers of search and seizure;
- (c) Regulation 5, which required persons entering New Zealand to make a declaration as to New Zealand money being brought into New Zealand;
- (d) Regulation 7, which required overseas remuneration for work and services provided in New Zealand to be paid to the Reserve Bank, a trading bank, or an authorised foreign exchange dealer;
- (e) Regulation 9, which required the proceeds of sale of exported goods to be paid to the Reserve Bank, a trading bank, or an authorised foreign exchange dealer;
- (f) Regulation 10, which required payment for imports to be made in such currency and manner as the Reserve Bank determined.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 22 January 1985.

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