

1969/216



THE FINANCE COMPANIES (INVESTMENT) REGULATIONS
(NO. 2) 1969

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 20th day of October
1969

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.

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Finance Companies (Investment) Regulations (No. 2) 1969.

(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,—

“Credit sale agreement” means an agreement for the sale of goods under which the whole or part of the purchase price is payable by instalments, other than such an agreement that provides for the instalments to be spread over a period of less than 9 months:

“Goods” includes all chattels personal, other than money or things in action:

“Government stock” means New Zealand Government stock issued and registered in New Zealand; and includes Treasury Bills:

“Hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, whether on the performance of any act by the parties to the agreement or any of them or in any other circumstances; and includes any agreement for the bailment of goods, with or without expressly giving to the bailee an option to buy the goods, under which instalments are payable by the bailee during a specified or ascertainable period at the end of which the bailee may continue the bailment without any payment or subject to the payment of a nominal rent only:

“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:

“Quarter” means every period of 3 months ending with the 31st day of March, the 30th day of June, the 30th day of September, or the 31st day of December in each year:

“Reserve Bank”, or “the Bank”, means the Reserve Bank of New Zealand constituted under the Reserve Bank of New Zealand Act 1964.

(2) In relation to any person, company, society, or association that first becomes a finance company at any time during any quarter or period to which any of the provisions of regulation 7 or regulation 9 of these regulations apply, references in those regulations to that quarter or period shall, unless the context otherwise requires, be read as references to the then unexpired portion of that quarter or period.

3. “Finance company” defined—(1) In these regulations, unless the context otherwise requires, the term “finance company” means any person, company, society, or association (whether incorporated or not) which, in the course of his or its business, borrows any money and invests any money; but does not include—

- (a) The Reserve Bank; or
- (b) A trading bank for the time being named in the First Schedule to the Reserve Bank of New Zealand Act 1964; or
- (c) A trustee savings bank constituted under the Trustee Savings Banks Act 1948; or
- (d) A private savings bank within the meaning of the Private Savings Banks Act 1964; or
- (e) A building society within the meaning of the Building Societies Act 1965.

(2) Notwithstanding anything in subclause (1) of this regulation, a person, company, society, or association shall not at the end of any quarter be a finance company for the purposes of these regulations if either his or its borrowings or his or its investments do not then exceed \$50,000; but this subclause shall not apply to—

- (a) A company, within the meaning of the Companies Act 1955, if any shares in the company that are beneficially owned by any other company or by any person, society, or association (whether the society or association is incorporated or not, and whether or not that other company or that person, society, or association is a finance company) carry the right to exercise or control the exercise of 50 percent or more of the voting power at any general meeting of the first-mentioned company; or
- (b) A company, person, society, or association (whether incorporated or not) that is the beneficial owner of shares in any finance company (being a company within the meaning of the Companies Act 1955) that carry the right to exercise or control the exercise of 50 percent or more of the voting power at any general meeting of the last-mentioned finance company.

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

4. **“Borrowings” defined**—(1) In these regulations, unless the context otherwise requires, the term “borrowings”, in relation to a finance company, means the total amount borrowed by the finance company, whether within or outside New Zealand, and not for the time being repaid. For the purposes of this subclause, where a cheque or other order on its bank is given by the finance company in repayment of any amount borrowed by it, that amount shall be deemed not to be repaid until it has been debited to the finance company’s account at that bank.

(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 or in return for the issue of convertible or redeemable notes; but does not include—

- (a) Borrowing by way of bank overdraft; or
- (b) The receiving of credit in the course of a bona fide mercantile current account; or
- (c) Borrowing from a company that is related to the borrowing company within the meaning of regulation 6 of these regulations, except where—
 - (i) The borrower has investments within the meaning of regulation 5 of these regulations; or
 - (ii) The borrowing is from outside New Zealand.

(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 6 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 but without limiting the provisions of these regulations, a finance company shall be deemed to borrow money if it 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; and in any such case the amount of the consideration for such sale by the finance company of the land or interest in land shall be deemed to be an amount borrowed by it.

(6) For the purposes of these regulations, 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,—

(a) Each such branch shall be deemed to be a separate person; and

(b) Any money made available to any such branch by the body corporate shall be deemed to be borrowed by that branch.

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

5. “Investment” defined—(1) In these regulations, unless the context otherwise requires, and except as provided in subclause (3) of this regulation, the term “investment” means—

(a) The lending of money, with or without security; or

(b) The financing or discounting of hire purchase agreements or credit sale agreements; or

(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 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 3 months—

and “invests” has a corresponding meaning.

(2) For the purposes of paragraph (b) of subclause (1) of this regulation, where by virtue of two or more agreements, none of which by itself constitutes a hire purchase agreement or a credit sale agreement, there is a transaction which is in substance or effect a hire purchase agreement or a credit sale agreement, as defined in regulation 2 (1) of these regulations, the transaction shall be treated as a hire purchase agreement or credit sale agreement.

(3) For the purposes of these regulations, but subject to subclause (2) of this regulation, the term “investment” does not include—

(a) The giving of credit in the course of a bona fide mercantile current account; or

(b) The depositing of money with any trading bank for the time being named in the First Schedule to the Reserve Bank of New Zealand Act 1964, or with any trustee savings bank constituted under the Trustee Savings Banks Act 1948, or with any private savings bank within the meaning of the Private Savings Banks Act 1964, or with any building society within the meaning of the Building Societies Act 1965; or

(c) Any investment in Government stock; or

(d) Any investment in securities issued by any local authority in accordance with the Local Authorities Loans Act 1956; or

- (e) The depositing of money with any person for the time being authorised by the Reserve Bank to receive money on deposit as a short-term money market dealer; or
- (f) The making of loans to any exploration company within the meaning of section 153A of the Land and Income Tax Act 1954, as amended by section 31 of the Land and Income Tax Amendment Act (No. 2) 1968; or
- (g) The making of loans to employees of the finance company or of any company that is related to the lending company within the meaning of regulation 6 of these regulations, being loans for the sole use and benefit of such employees; or
- (h) Investments in favour of any company that is related to the investing company within the meaning of regulation 6 of these regulations.

6. "Related company" defined—(1) For the purposes of regulations 4 and 5 of these regulations, where a company holds more than half in nominal value of the equity share capital of another company, each of those companies shall be deemed to be related to the other.

(2) For the purposes aforesaid, where a company holds more than half in nominal value of the equity share capital of each of two or more companies, each of those companies, including the first-mentioned company, shall be deemed to be related to each of the others.

(3) Without prejudice to the foregoing provisions of this regulation, where the Reserve Bank is satisfied that any company, by reason of its holding more than half in nominal value of the equity share capital of another company, has to the same extent effective ownership of other specified companies, all or any of such companies, including the first-mentioned company, if not related by virtue of the foregoing provisions of this regulation, may be treated for the purposes of the said regulations 4 and 5 as being related to each other.

(4) Where any person or firm (whether incorporated or not) holds shares in a company, the person or firm shall be deemed for the purposes of this regulation to be a company holding shares in the first-mentioned company.

(5) For the purposes of this regulation, the term "equity share capital" means, in relation to a company, its issued share capital excluding any part thereof that does not, either in respect of dividends or in respect of capital, carry any right to participate beyond a specified amount in a distribution.

7. Finance companies to hold Government stock—(1) Every finance company shall at all times during every quarter in each year hold in Government stock an amount at least equal to such percentage of its borrowings, as at the end of the immediately preceding quarter, as may from time to time be fixed by Order in Council, but not exceeding 25 percent:

Provided that in respect of the period beginning with the commencement of these regulations and ending with the 30th day of June 1970 different percentages may be fixed in respect of different quarters or dates during that period.

(2) In calculating any holding in Government stock for the purposes of this regulation, no Government stock shall be taken into account unless the finance company is the beneficial owner thereof.

(3) For the purposes of this regulation, a finance company that makes any payment to the Registrar of Stock by way of advance subscription for any future issue of Government stock, or by way of instalment of subscription for any then current issue of Government stock, shall be deemed to hold Government stock to the extent of such payment.

(4) For the purposes of this regulation, a finance company shall be deemed to hold Government stock on the first day of any quarter or other period, or on any specified date, if it holds such stock not later than the 14th day after the said first day or specified date, as the case may require.

8. Finance companies to register with the Reserve Bank—(1) Every finance company shall—

- (a) Within 1 month after the commencement of these regulations; or
- (b) In the case of a person, company, society, or association that at any time after the commencement of these regulations becomes a finance company as defined in these regulations, within 1 month after so becoming a finance company—

send to the Head Office of the Reserve Bank at Wellington a notice in writing stating that it is subject to these regulations and specifying the name and address of the finance company.

(2) In the case of a company or other body corporate, the notice shall also state—

- (a) Whether it is a holding company for the purposes of the Companies Act 1955 and, if it is, the names, and the addresses of the registered offices, of all its subsidiaries:
- (b) Whether it is a subsidiary for the purposes of the Companies Act 1955 and, if it is, the name and the address of the registered office of its holding company:
- (c) Whether any of its shares or stock beneficially owned by any one person, society, or association (whether incorporated or not), carry the right to exercise or control the exercise of 50 percent or more of the voting power at any general meeting of the company or body corporate, and, if so, the name and address of that person, society, or association and whether he or it in like manner controls 50 percent or more of the voting power at any general meeting of any other finance company.

9. Returns of borrowings—(1) Every finance company shall, within 14 days after the end of every quarter, send to the Head Office of the Reserve Bank at Wellington a return specifying the amount of the finance company's borrowings as at the end of that quarter, and containing such further information and particulars relating to matters to which these regulations apply, including the investment of money borrowed, as may be required by the Bank.

(2) Every such return shall be in a form to be provided by the Bank.

(3) 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 borrowed any money or with or in respect of whom the finance company has made any investment.

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

(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 Governor of the Reserve Bank) that the Governor 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 Governor, as the case may be.

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

(2) Any such exemption may be granted in respect of—

(a) Any specified amount or portion of the borrowings of finance companies:

(b) Any class or classes of finance companies:

(c) Any particular finance company:

(d) Such transactions, or class or classes of transactions, as the Minister may determine.

(3) Any such exemption may be granted wholly or partly and either unconditionally or subject to such conditions as the Minister thinks fit.

(4) 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.

(5) 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.

12. 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 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.

13. 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, 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.

14. 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.

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

16. 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.

17. Revocation—The Finance Companies (Investment) Regulations 1969† are hereby revoked.

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

*S.R. 1965/157
Amendment No. 1: S.R. 1966/96
Amendment No. 2: S.R. 1968/3
Amendment No. 3: S.R. 1969/155
†S.R. 1969/116

EXPLANATORY NOTE

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

These regulations are in substitution for the Finance Companies (Investment) Regulations 1969. The general effect of the regulations is the same as that of the revoked regulations, namely that every finance company is to hold in Government stock an amount at least equal to a prescribed percentage of its borrowings; but in these regulations the terms "finance company", "borrowings", and "investment" are redefined so as to make certain exceptions.

Regulation 2 defines certain general terms used in the regulations.

Regulation 3 redefines a finance company. In subclause (1) it is made clear that a person or body of persons which, in the course of his or its business, "borrows" any money and "invests" any money in any of the ways described in regulations 4 and 5 is a finance company for the purposes of the regulations, whether or not such investment is his or its main business, and whether or not the money used for such investment is the same money that was borrowed. Subclause (2) exempts a person or body if at the end of any quarter either his or its borrowings or his or its investments do not exceed \$50,000; but this exemption does not apply to a company in which any person, company, or body beneficially owns shares carrying the right to exercise or control the exercise of 50 percent or more of the voting power at a general meeting, or to a person, company, or body that beneficially owns such shares in a finance company.

Regulation 4 redefines "borrowings" so as to exclude bank overdrafts; the receiving of credit in the course of a bona fide mercantile current account; or borrowing from a "related company" (as defined in regulation 6), except where the borrower has "investments" (as defined in regulation 5) or where the borrowing is from outside New Zealand. In other respects the regulation re-enacts the previous regulations relating to borrowing.

Regulation 5 redefines "investment" so as to exclude the depositing of money with a trading bank, a trustee savings bank, a private savings bank, or a building society; investments in Government stock; investments in local authority securities; the depositing of money with an authorised short-term money market dealer; loans to certain mining or petroleum exploration companies; loans to employees of the finance company or of a related company, for the sole use and benefit of such employees; and investments in favour of a related company.

Regulation 6 is new, and defines a "related company" for the purposes of regulations 4 and 5.

Regulation 7 provides that at all times during every quarter in each year every finance company shall hold in Government stock, as beneficial owner, an amount at least equal to such percentage of its borrowings, as at the end of the immediately preceding quarter, as may from time to time be fixed by Order in Council, but not exceeding 25 percent. Such an Order in Council may fix different percentages for different quarters or dates during the initial period ending with 30 June 1970. Advance subscriptions for future stock, and instalments paid for then current issues, are treated as holdings.

Regulation 8 requires all finance companies to register with the Reserve Bank within 1 month after the commencement of the regulations or, as the case may require, within 1 month after becoming subject to the regulations. Certain particulars are required by subclause (2).

Regulation 9 provides that within 14 days after the end of each quarter every finance company is to send to the Reserve Bank a return of its borrowings as at the end of that quarter.

Regulation 10 deals with the delegation of the Minister's powers.

Regulation 11 provides for the granting of exemptions.

Regulation 12 deals with the giving of notices.

Regulation 13 authorises the Minister to require finance companies to supply returns or information for the purposes of the regulations.

Regulation 14 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 15: The Capital Issues (Overseas) Regulations 1965 must still be complied with where necessary.

Regulation 16 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 \$2,000 for an individual, or a fine of \$4,000 for a body corporate, with provision for further fines for continuing offences.

Regulation 17 revokes the previous Finance Companies (Investment) Regulations 1969.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 23 October 1969.

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