

1970/148

**THE FINANCE COMPANIES (INVESTMENT) REGULATIONS
(NO. 2) 1969, AMENDMENT NO. 1**

RICHARD WILD, Administrator of the Government

ORDER IN COUNCIL

At the Government House at Wellington this 20th day of July 1970

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL

PURSUANT to the Reserve Bank of New Zealand Act 1964, His Excellency the Administrator of the Government, 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, Amendment No. 1, and shall be read together with and deemed part of the Finance Companies (Investment) Regulations (No. 2) 1969* (hereinafter referred to as the principal regulations).

(2) These regulations shall be deemed to have come into force on the 24th day of October 1969.

2. Interpretation—(1) Regulation 2 of the principal regulations is hereby amended by omitting from the definition of the term “credit sale agreement”, in subclause (1), the words “less than 9 months”, and substituting the words “6 months or less”.

(2) The said regulation 2 is hereby further amended by adding to subclause (1) the following definition:

“‘Trade credit’ means credit given, or, as the case may require, received, in the course of business in relation to the sale or purchase of goods or the provision of services.”

3. “Finance company” defined—Regulation 3 of the principal regulations is hereby amended by omitting from subclause (1) the words “borrows any money and invests any money”, and substituting the words “borrows any money (or has borrowed any money which for the time being is not repaid) and invests any money (or has invested any money which for the time being is not repaid)”.

4. “Borrowings” defined—(1) Regulation 4 of the principal regulations is hereby amended by inserting, after subclause (1), the following subclause:

“(1A) In subclause (1) of this regulation, the expression ‘the total amount borrowed by the finance company’ includes—

“(a) All amounts borrowed before the date of the commencement of these regulations; or

“(b) If the finance company becomes or has become subject to these regulations after the commencement of these regulations, all amounts borrowed before the date on which it is or was first required, pursuant to regulation 7 of these regulations, to hold Government stock—

as well as all amounts borrowed on or after any such date as aforesaid.”

(2) The said regulation 4 is hereby further amended by inserting in subclause (2), after the words “includes a reference to”, the words “the receiving of credit, and to an agreement to receive credit, and also includes a reference to”.

(3) The said regulation 4 is hereby further amended by revoking paragraph (b) of subclause (2), and substituting the following paragraph:

“(b) The receiving of, or an agreement to receive, trade credit, whether in the course of a bona fide mercantile current account or otherwise, for a total period not exceeding 6 months in respect of any one item of goods or services, being a period commencing from the date on which possession of that item of goods is given and taken or, as the case may be, from the date of completion of that item of services; or”

(4) The said regulation 4 is hereby further amended by inserting, after subclause (2), the following subclause:

“(2A) Notwithstanding anything in subclause (2) (b) of this regulation, in any case where trade credit is or has been received, or agreed to be received, for a period exceeding 6 months in respect of any item as aforesaid, the Bank may in its discretion, on application, and subject to such conditions and limitations as it thinks fit, determine that the receiving of that credit shall not be treated as the borrowing of money for the purposes of these regulations, and every such determination shall have effect accordingly.”

(5) The said regulation 4 is hereby further amended by revoking subclause (7), and substituting the following subclause:

“(7) In these regulations, the term ‘borrows’ shall be construed to include the doing of any act or thing which by virtue of any of the foregoing provisions of this regulation amounts to borrowing; but nothing in this subclause or in the foregoing provisions of this regulation shall be construed to limit the generality of the term ‘borrows’ or of any derivative of that term or of any references in these regulations to the borrowing of money.”

5. “Investment” defined—(1) Regulation 5 of the principal regulations is hereby amended by revoking paragraph (a) of subclause (1), and substituting the following paragraph:

“(a) The lending of money, with or without security, and irrespective of the period of the loan; or the giving of credit, with or without security, or an agreement to give such credit; or”.

(2) The said regulation 5 is hereby further amended by omitting from subclause (1) the words “and ‘invests’ has a corresponding meaning”, and substituting the words “and ‘invests’ and ‘investing’ have corresponding meanings”.

(3) The said regulation 5 is hereby further amended by inserting, after subclause (1), the following subclause:

“(1A) Without limiting the generality of subclause (1) of this regulation, the term ‘investment’ includes, for the purposes of these regulations, any such investment as aforesaid—

“(a) Made before the date of the commencement of these regulations and not for the time being repaid; or

“(b) In the case of a finance company that becomes or has become subject to these regulations after the commencement of these regulations, made before the date on which it is or was first required, pursuant to regulation 7 of these regulations, to hold Government stock, and not for the time being repaid—

as well as investments made on or after any such date as aforesaid.”

(4) The said regulation 5 is hereby further amended by revoking paragraph (a) of subclause (3), and substituting the following paragraph:

“(a) The giving of, or an agreement to give, trade credit, whether in the course of a bona fide mercantile current account or otherwise, for a total period not exceeding 6 months in respect of any one item of goods or services, being a period commencing from the date on which possession of that item of goods is given and taken or, as the case may be, from the date of completion of that item of services; or”.

(5) The said regulation 5 is hereby further amended by adding the following subclause:

“(4) Notwithstanding anything in subclause (3) (a) of this regulation, in any case where trade credit is or has been given, or agreed to be given, for a period exceeding 6 months in respect of any item as aforesaid, the Bank may in its discretion, on application, and subject to such conditions and limitations as it thinks fit, determine that the giving of that credit shall not be treated as an investment for the purposes of these regulations, and every such determination shall have effect accordingly.”

6. “Related company” defined—Regulation 6 of the principal regulations is hereby amended by revoking subclauses (3) and (4), and substituting the following subclauses:

“(3) Without prejudice to the foregoing provisions of this regulation, where the Reserve Bank is satisfied that—

“(a) 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; or

“(b) More than half in nominal value of the equity share capital of a company, or of each of two or more companies, is held by any one shareholder not being a company or one individual, or by two or more shareholders as joint holders—

all or any of such companies, including the first-mentioned company, and that shareholder or those joint shareholders (as the case may require), if not related by virtue of the foregoing provisions of this regulation, may in the discretion of the Bank be treated for the purposes of the said regulations 4 and 5 as being companies related to each other.

“(4) Where any one individual holds shares in a company he shall be deemed for the purposes of subclauses (1) and (2) and paragraph (a) of subclause (3) of this regulation to be a company holding shares in the first-mentioned company.

“(4A) For the purposes of this regulation, if at any time—

“(a) The collective shareholding of any two or more shareholders in a company amounts in the aggregate to more than half in nominal value of the equity share capital of that company; and

“(b) The same shareholders hold shares in any other company and their collective shareholding in that other company amounts in the aggregate to more than half in nominal value of the equity share capital of that other company—

the companies shall not by virtue only of that fact be deemed to be related to each other except to the extent that the Reserve Bank in its discretion, on application, designates them as being related companies.”

P. J. BROOKS,
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 amend the Finance Companies (Investment) Regulations (No. 2) 1969, under which finance companies (as defined in regulation 3 of those regulations) are required to hold a percentage of their borrowings in Government stock.

Regulation 2 (1) of these regulations amends the definition of “credit sale agreement” in the principal regulations.

Regulation 2 (2) inserts in the principal regulations a definition of “trade credit”, which is for the purposes of the amendments made by regulations 4 and 5 of these regulations.

The effect of regulations 3 and 4 (1) of these regulations is to make it clear that the reference in regulation 4 of the principal regulations to the total amount “borrowed” by a finance company includes amounts borrowed before the date on which the finance company became subject to the regulations, and not for the time being repaid.

Regulations 4 (2) to (4) and 5: Under the principal regulations, the receiving of credit in the course of a bona fide mercantile current account is not treated as a borrowing, and the giving of such credit is not treated as an investment. These exemptions are amended by limiting them to trade credit so far as it does not exceed 6 months in respect of any one item; but each exemption will now apply whether or not the trade credit is in the course of a bona fide mercantile current account. Also, in both cases the Reserve Bank is given a discretion to exempt trade credits in particular cases where they exceed 6 months.

Regulation 6: Under the principal regulations, certain borrowings from and investments with related companies are exempted. “Related company” is defined in regulation 6 of the principal regulations. That regulation is amended to clarify the definition, and the Reserve Bank is given a wider discretion to treat certain companies as related.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 23 July 1970.

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