



**THE FINANCIAL INSTITUTIONS (MORTGAGE LOANS)
REGULATIONS (NO. 2) 1983**

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 11th day of November
1983

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to sections 34AA (1) and 50 of 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.

ANALYSIS

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REGULATIONS

1. Title—These regulations may be cited as the Financial Institutions (Mortgage Loans) Regulations (No. 2) 1983.

2. Commencement and expiry—(1) These regulations shall come into force at 4.10 p.m. on the 11th day of November 1983.

(2) These regulations shall continue in force until the close of the 29th day of February 1984, and shall then expire.

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

“Finance rate” has the meaning assigned to it in section 6 of the Credit Contracts Act 1981:

“Financial institution” has the meaning given to it by section 2 of the Reserve Bank of New Zealand Act 1964:

“Interest”, in relation to any loan, includes—

(a) All money or money’s worth that the borrower has paid or provided or is or may become liable to pay or provide by virtue of the contract for the loan; and

(b) All money or money’s worth paid or provided to or for the benefit of the lender in excess of the amount of the loan:

“Mortgage loan”—

(a) Means any loan—

(i) Which is made or is to be made by a financial institution; and

(ii) Which is secured, in whole or in part, or is to be secured, in whole or in part, by way of a mortgage over property; but

(b) Does not include—

(i) An advance made on overdraft by a trading bank; or

(ii) A loan made to a body corporate and secured by a debenture over assets of the body corporate but not secured by any other mortgage over property; or

(iii) A loan made to a body corporate pursuant to an offer of securities to the public, being an offer that—

(A) Is contained in a prospectus that, before the 10th day of November 1983, was registered under the Companies Act 1955 or the Securities Act 1978; and

(B) Is made in terms of that offer as it stood immediately before the 10th day of November 1983; or

(iv) An advance made by, or an amount that becomes owing to, a trading bank or a trustee savings bank established under the Trustee Savings Banks Act 1948 as part of a credit card transaction; or

(v) A loan involving the borrowing of money outside New Zealand in terms of the Exchange Control Regulations 1978:

“Property” means—

(a) Any estate or interest in land; and

(b) Any estate or interest in any shares in, or licence granted by, a flat or office owning company as defined in Part I of the Companies Amendment Act 1964:

“Rate of interest” means—

(a) Where interest is paid or credited—

(i) At the expiration of the term of the loan; or

(ii) By instalments in arrears (none of which, other than the first, is paid or credited earlier than at the expiration of each month during the term of the loan),—

the rate which expresses the amount of interest as a percentage per annum of the amount of the loan:

(b) In all other cases, the rate which expresses the amount of interest as a percentage per annum of the amount of the loan reduced by the amount of any interest paid or credited earlier than at the expiration of each 3 months.

(2) For the purposes of these regulations, where one company holds more than half in nominal value of the equity share capital of another company, those companies are deemed to be related companies.

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

4. Restrictions on interest payable in respect of mortgage loans—

(1) No financial institution shall make any mortgage loan at a rate of interest that,—

(a) In the case of a mortgage loan secured or to be secured, in whole or in part, by a first mortgage, exceeds 11 percent per annum; or

(b) In the case of a mortgage loan secured or to be secured, in whole or in part, by a mortgage other than a first mortgage, exceeds 14 percent per annum.

(2) The making of a mortgage loan does not contravene subclause (1) (a) of this regulation if the finance rate in respect of that mortgage loan does not exceed 11 percent per annum.

(3) The making of a mortgage loan does not contravene subclause (1) (b) of this regulation if the finance rate in respect of that mortgage loan does not exceed 14 percent per annum.

(4) A financial institution which—

(a) Extends or agrees to extend any mortgage loan beyond the expiry of its term; or

(b) Agrees to allow a mortgage loan to run on for a period of 6 months or more beyond the expiry of its term,—

shall be deemed to make a mortgage loan.

5. Limitation on right to increase interest payable in respect of mortgage loans—(1) No financial institution shall, in the case of a mortgage loan, whether made before or after the commencement of these regulations, increase the rate of interest payable in respect of that mortgage loan above the maximum rate of interest that would, in the case of a mortgage loan made, at any time while these regulations are in force, by a financial institution, be applicable under regulation 4 (1) of these regulations.

(2) The increasing of the rate of interest payable in respect of a mortgage loan does not contravene subclause (1) of this regulation—

(a) If, in the case of a mortgage loan in respect of which the maximum rate applicable is that specified in regulation 4 (1) (a) of these regulations, the finance rate, after the increase, does not exceed 11 percent per annum; or

(b) If, in the case of a mortgage loan in respect of which the maximum rate of interest applicable is that specified in regulation 4 (1) (b) of these regulations, the finance rate, after the increase, does not exceed 14 percent per annum.

(3) Nothing in subclause (1) of this regulation shall apply to any increase in the rate of interest payable in respect of a mortgage loan where the contract for that mortgage loan was entered into before the 10th day of

November 1983 and requires that the rate of interest shall be adjusted automatically at any time or times in accordance with a formula or index set out or specified in the contract.

(4) Nothing in this regulation affects any increase effected under section 40 of the Credit Contracts Act 1981.

6. Prohibited transactions—No person shall—

- (a) Enter into any transaction, or make any contract or arrangement, purporting to do, whether presently or at some future time or upon the happening of any event or contingency, anything that contravenes or will contravene the provisions of these regulations; or
- (b) Enter into any transaction, or make any contract or arrangement, whether orally or in writing, or do anything, for the purpose of or having the effect of, in any way, whether directly or indirectly, defeating, evading, or preventing the operation of these regulations in any respect.

7. Revocation—The Financial Institutions (Mortgage Loans) Regulations 1983* are hereby revoked.

8. Transitional provision—Where, before the 10th day of November 1983, a financial institution—

- (a) Has made an offer to make a mortgage loan to any person; or
- (b) Has entered into a contract to make a mortgage loan to any person,—nothing in regulation 4 of these regulations shall apply in respect of any mortgage loan made by the financial institution to that person after the commencement of these regulations pursuant to that offer or contract or in terms of that offer or contract.

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

*S.R. 1983/244

EXPLANATORY NOTE

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

These regulations, which come into force at 4.10 p.m. on 11 November 1983, limit the interest that financial institutions may charge in respect of “mortgage loans”. The regulations expire with the close of 29 February 1984.

A “mortgage loan”—

- (a) Means any loan—
 - (i) Which is made or is to be made by a financial institution; and
 - (ii) Which is secured, in whole or in part, or is to be secured, in whole or in part, by way of a mortgage over property; but
- (b) Does not include—
 - (i) An advance made on overdraft by a trading bank; or
 - (ii) A loan made to a body corporate and secured by a debenture over assets of the body corporate but not secured by any other mortgage over property; or
 - (iii) A loan made to a body corporate pursuant to an offer of securities to the public, being an offer that—
 - (A) Is contained in a prospectus that, before the 10th day of November 1983, was registered under the Companies Act 1955 or the Securities Act 1978; and

- (B) Is made in terms of that offer as it stood immediately before the 10th day of November 1983; or
- (iv) An advance made by, or an amount that becomes owing to, a trading bank or a trustee savings bank established under the Trustee Savings Banks Act 1948 as part of a credit card transaction; or
- (v) A loan involving the borrowing of money outside New Zealand in terms of the Exchange Control Regulations 1978.

“Property” means—

(a) Any estate or interest in land; and

(b) Any estate or interest in any shares in, or licence granted by, a flat or office owning company as defined in Part I of the Companies Amendment Act 1964.

The maximum permissible rate of interest that applies where a mortgage loan is secured by a first mortgage is 11 percent per annum. However, a mortgage loan secured by a first mortgage will not contravene the regulations if the finance rate (as defined in section 6 of the Credit Contracts Act 1981) does not exceed 11 percent per annum.

The maximum permissible rate of interest that applies where a mortgage loan is secured by a mortgage other than a first mortgage is 14 percent per annum. In this case such a mortgage loan will not contravene the regulations if the finance rate (as so defined) does not exceed 14 percent per annum.

The regulations now contain a transitional provision (*regulation 8*) which makes it clear that where, before 10 November 1983 (the date of commencement of the Financial Institutions (Mortgage Loans) Regulations 1983), a financial institution—

(a) Has made an offer to make a mortgage loan to any person; or

(b) Has entered into a contract to make a mortgage loan to any person,—
nothing in regulation 4 of the regulations shall apply in respect of any mortgage loan made by the financial institution to that person after the commencement of the regulations pursuant to that offer or contract or in terms of that offer or contract.

In the case of private mortgage loans, similar limitations are being imposed by regulations made under the Economic Stabilisation Act 1948.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 12 November 1983.

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