



Financial Reporting (Fees and Forms) Regulations 2007

Anand Satyanand, Governor-General

Order in Council

At Wellington this 14th day of May 2007

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 42B of the Financial Reporting Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations**1 Title**

These regulations are the Financial Reporting (Fees and Forms) Regulations 2007.

2 Commencement

These regulations come into force on 18 June 2007.

3 Interpretation

In these regulations, unless the context otherwise requires,—
Act means the Financial Reporting Act 1993
section 4B or 35A application means an application to the Securities Commission to grant or amend an exemption under section 4B or 35A of the Act.

*Fees and charges payable to Securities Commission for
exemptions under section 4B or 35A of Act*

4 Fees payable to Securities Commission for section 4B or 35A applications

The Securities Commission may require payment to it of—

- (a) a fee of \$112.50 for a section 4B or 35A application; and
- (b) a fee or fees calculated at the following hourly rates in respect of a section 4B or 35A application:
 - (i) for work carried out by a member of the Securities Commission, an hourly rate of \$225;
 - (ii) for work carried out by an officer or employee of the Securities Commission who holds a qualification in accountancy, business, commerce, economics, or law, an hourly rate of \$163.

5 Charges payable to Securities Commission for section 4B or 35A applications

The Securities Commission may require payment to it of a charge or charges for the costs incurred by it in—

- (a) obtaining expert advice or expert assistance in connection with a section 4B or 35A application; and
- (b) the printing and publication in the Statutory Regulations series of a notice under section 4B or 35A of the Act; and
- (c) the publication in the *Gazette* of a notice under the Acts and Regulations Publication Act 1989 of a notice under section 4B or 35A of the Act.

6 When applicant must pay fees and charges

The fees and charges under regulations 4 and 5 are payable by the person who makes the relevant application,—

- (a) in the case of regulation 4(a), when the application is made; and
- (b) in any other case, before the 20th day of the month following the month in which an invoice is rendered by the Securities Commission.

7 GST included

The fees prescribed in regulation 4 are inclusive of goods and services tax.

Forms

8 Forms

The forms set out in the Schedule are the forms to be used for the matters under the Act to which those forms relate.

Schedule Forms

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Form 1

Declaration that entity was non-active
Section 10A, Financial Reporting Act 1993

[The declaration in the format set out below must be made on behalf of the directors of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.]

I, [name of director of entity], of [place, occupation], solemnly and sincerely declare that—

Form 1—continued

- (a) I am a director of [*name of entity*]; and
- (b) the incorporation or registration number of [*name of entity*] is [*incorporation or registration number*]; and
- (c) [*name of entity*] was a non-active entity (as defined in section 10A(2) of the Financial Reporting Act 1993) in respect of the accounting period ending on [*balance date*].

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

.....
Signature

Declared at [*place*] this [*date*] day of [*month, year*]

.....
Signature of person authorised to take statutory declaration

Form 2
Infringement notice
Section 41B, Financial Reporting Act 1993

Infringement notice No: Date of notice:

Enforcement authority

Issued by: *[full name of Registrar, Registrar's full title]*

Address for correspondence and queries:

Infringement notice served on—

Full name:

Full address:

Date of birth:

Occupation:

Gender:

Telephone number:

Alleged infringement offence details

The offence is one against section *[specify section]* of the Financial Reporting Act 1993.

Date:

Time:

Place to which copy of statements and auditor's report should have been delivered:

Name of issuer or company concerned:

Incorporation or registration number of issuer or company concerned (if any):

Address of issuer or company concerned: *[specify registered office or, if there is no registered office in New Zealand, the principal place of business in New Zealand]*

Nature of alleged infringement:

The infringement fee payable is \$7,000.

Service details

Infringement notice served by *[method of service]* on *[date of service]*.

Payment of infringement fee

The infringement fee is payable within 28 days after *[date notice delivered personally or sent by post]*.

Form 2—*continued*

The infringement fee may be paid to the enforcement authority at [address]. Cheques or money orders should be made out to [specify name] and should be crossed and marked “Not transferable”.

Important: Please read the summary below—if you do not understand it, you should consult a lawyer immediately.

Summary of rights

- 1 This notice sets out an alleged infringement offence.

Payments

- 2 If you pay the infringement fee for an alleged infringement offence within 28 days after you have been served with this notice, no further enforcement action will be taken for that offence. Payments should be made to the enforcement authority at the address for payment specified in this notice.

If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you enter or have entered into a time-to-pay arrangement with an informant in respect of an infringement fee payable by you, paragraphs 4(b), 4(c), 5, 6, and 7 below do not apply, and you are not entitled either to request a hearing to deny liability or to ask the court to consider any submissions (as to penalty or otherwise) in respect of the infringement.

Defence

- 3 You have a complete defence against proceedings for an alleged infringement offence if the infringement fee has been paid to the enforcement authority, at the address for payment specified in this notice, before or within 28 days after a reminder notice in respect of the alleged offence is served on you. Late payment or payment made to any other address will not constitute a defence.

Further action

- 4 You should write to the enforcement authority at the address for correspondence shown on the front page of this notice if you wish to—

Form 2—*continued*

- (a) raise any matter relating to the circumstances of an alleged offence for consideration by the enforcement authority; or
- (b) deny liability for the alleged offence and request a court hearing; or
- (c) admit liability for the alleged offence, but wish to have a court consider written submissions as to penalty or otherwise.

The letter should be personally signed.

- 5 You have a right to request a hearing. If you deny liability for the alleged offence and request a hearing, the enforcement authority will serve you with a notice of hearing that sets out the place and time at which the matter will be heard by the court (unless the authority decides not to start court proceedings).

Note: If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

- 6 A request for a hearing must—
- (a) be in writing and signed by you; and
 - (b) be delivered to the enforcement authority at the address for correspondence shown on the front page of this notice; and
 - (c) be so delivered within 28 days after you have been served with a reminder notice.
- 7 If you admit liability for the alleged offence but want the court to consider your submissions as to penalty or otherwise, you should, in your letter to the enforcement authority,—
- (a) request a hearing; and
 - (b) admit liability for the offence; and
 - (c) set out the written submissions you wish to be considered by the court.

The enforcement authority will then file your letter with the court (unless the enforcement authority decides not to start court proceedings). There is no provision for an oral hearing before the court if you follow this course of action.

Form 2—*continued*

Note: Costs will be imposed in addition to any penalty.

- 8 If you do not pay the infringement fee and do not request a hearing in respect of an alleged offence within 28 days after you have been served with this notice, you will (unless the enforcement authority decides otherwise) be served with a reminder notice.
- 9 If you do not pay the infringement fee and do not request a hearing in respect of the alleged offence within 28 days after being served with the reminder notice, you will become liable to pay costs in addition to a fine (if the enforcement authority decides to start court proceedings against you). The fine will be equal to the amount of the infringement fee or the amount of the infringement fee remaining unpaid.
- 10 When writing or making payment of an infringement fee, please indicate—
 - (a) the date of the alleged infringement offence; and
 - (b) the infringement notice number; and
 - (c) your full name and address for replies.

Note: All queries and correspondence regarding the infringement offence must be directed to the enforcement authority at the address shown on the front page of this notice.

Further details of your rights and obligations are set out in section 21 of the Summary Proceedings Act 1957.

Form 3
Reminder notice
Section 41C, Financial Reporting Act 1993

Reminder notice No:

Date of notice:

Enforcement authorityInfringement notice issued by: *[full name of Registrar, Registrar's full title]*

Address for correspondence and queries:

This notice is to remind you that an infringement notice has been issued to you. The details of the notice are as follows:

Infringement notice served on—

Full name:

Full address:

Date of birth:

Occupation:

Gender:

Telephone number:

Alleged infringement offence detailsThe offence is one against section *[specify section]* of the Financial Reporting Act 1993.

Date:

Time:

Place to which copy of statements and auditor's report should have been delivered:

Issuer or company concerned:

Incorporation or registration number of issuer or company concerned (if any):

Address of issuer or company concerned: *[specify registered office or, if there is no registered office in New Zealand, the principal place of business in New Zealand]*

Nature of alleged infringement:

The infringement fee payable is \$7,000.

The amount of the infringement fee remaining unpaid:

Service details *[To be provided for filing in court]*Infringement notice served by *[method of service]* on *[date of service]*.

Form 3—*continued*

Reminder notice served by [*method of service*] at [*full address of service*] on [*date of service*].

Payment of infringement fee

The infringement fee was payable to the enforcement authority within 28 days after [*date infringement notice was delivered personally or sent by post*]. The infringement fee remains payable to the enforcement authority at [*address*].

The last day for payment of the infringement fee is [*insert date*], being 28 days after the date of service of this notice. Cheques or money orders should be made out to [*specify name*] and should be crossed and marked “Not transferable”.

Important: Please read the summary below—if you do not understand it, you should consult a lawyer immediately.

Summary of rights

- 1 You have not paid the infringement fee described on the front page, or asked for a hearing, within 28 days after you were served with the infringement notice. That is why you have been served with this reminder notice.

Payments

- 2 If you pay the infringement fee for an alleged infringement offence within 28 days after you are served with this notice, no further enforcement action will be taken for that offence. Payments should be made to the enforcement authority at the address for payment specified in this notice.

If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you enter or have entered into a time-to-pay arrangement with an informant in respect of an infringement fee payable by you, paragraphs 4(b), 4(c), 5, 6, and 7 below do not apply, and you are not entitled either to request a hearing to deny liability or to ask the court to consider any submissions (as to penalty or otherwise) in respect of the infringement.

Form 3—*continued**Defence*

- 3 You have a complete defence against proceedings for an alleged infringement offence if the infringement fee has been paid to the enforcement authority, at the address for payment specified in this notice, before or within 28 days after a reminder notice in respect of the alleged offence is served on you. Late payment or payment made to any other address will not constitute a defence.

Further action

- 4 You should write to the enforcement authority at the address for correspondence shown on the front page of this notice if you wish to—
- (a) raise any matter relating to the circumstances of an alleged offence for consideration by the enforcement authority; or
 - (b) deny liability for the alleged offence and request a court hearing; or
 - (c) admit liability for the alleged offence, but wish to have a court consider written submissions as to penalty or otherwise.

The letter should be personally signed.

- 5 You have a right to request a hearing. If you deny liability for the alleged offence and request a hearing, the enforcement authority will serve you with a notice of hearing that sets out the place and time at which the matter will be heard by the court (unless the enforcement authority decides not to start court proceedings).

Note: If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

- 6 A request for a hearing must—
- (a) be in writing and signed by you; and
 - (b) be delivered to the enforcement authority at the address for correspondence shown on the front page of this notice; and
 - (c) be so delivered within 28 days after you are served with this notice.

Form 3—*continued*

- 7 If you admit liability for the alleged offence but want the court to consider your submissions as to penalty or otherwise, you should, in your letter to the enforcement authority,—
- (a) request a hearing; and
 - (b) admit liability for the offence; and
 - (c) set out the written submissions you wish to be considered by the Court.

The enforcement authority will then file your letter with the court (unless the enforcement authority decides not to start court proceedings). There is no provision for an oral hearing before the court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

- 8 If you do not pay the infringement fee and do not request a hearing in respect of the alleged offence within 28 days after being served with this reminder notice, you will become liable to pay costs in addition to a fine (if the enforcement authority decides to start court proceedings against you). The fine will be equal to the amount of the infringement fee or the amount of the infringement fee remaining unpaid.
- 9 When writing or making payment of an infringement fee, please indicate—
- (a) the date of the alleged infringement offence; and
 - (b) the number of this reminder notice; and
 - (c) your full name and address for replies.

Note: All queries and correspondence regarding the infringement offence must be directed to the enforcement authority at the address shown on the front page of this notice.

Further details of your rights and obligations are set out in section 21 of the Summary Proceedings Act 1957.

Diane Morcom,
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 18 June 2007, prescribe certain matters for the purposes of the Financial Reporting Act 1993 (the **Act**).

Regulations 4 to 7 prescribe the fees and charges payable to the Securities Commission (the **Commission**) for exemptions under sections 4B and 35A of the Act. Section 4B allows the Commission to exempt persons from being issuers by virtue of being recipients of money from conduit issuers. Section 35A allows the Commission to exempt directors of overseas issuers from certain provisions of the Act.

Regulation 4 enables the Commission to require payment to it of fees for exemption applications that are calculated at an hourly rate of \$225 for work carried out by a member of the Commission, and at an hourly rate of \$163 for work carried out by an officer or employee of the Commission who holds a qualification in accountancy, business, commerce, economics, or law. Each application must be accompanied by a fee of \$112.50.

Regulation 5 enables the Commission to require payment to it of charges for the costs incurred by it in obtaining expert advice or expert assistance and in printing and publishing exemption notices. The fees are inclusive of goods and services tax.

Regulation 8 prescribes the following forms:

- the form of declaration that must be made in order to rely on the exemption from preparation requirements for non-active entities under section 10A of the Act;
- the form of infringement notice and reminder notice.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 17 May 2007.

These regulations are administered by the Ministry of Economic Development.
