



THE FINANCIAL SERVICES REGULATIONS 1983

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 9th day of November
1983

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Economic Stabilisation Act 1948, 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**—These regulations may be cited as the Financial Services Regulations 1983.

2. Commencement and expiry—(1) These regulations shall come into force on the 10th 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,—

“Commerce Commission” means the Commerce Commission constituted by the Commerce Act 1975:

“Credit instrument” means any agreement (whether in writing or not) acknowledging an obligation to pay a sum or sums of money on demand or at any future time or times:

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

“Financial service” means—

(a) Any kind of service (other than the making of a private mortgage loan) which falls within any of the following categories of service:

(i) The lending of money:

(ii) The granting of credit:

(iii) The depositing of money with any person:

(iv) The guaranteeing of the repayment of any money lent or credit granted:

(v) The provision of life insurance, life assurance, or life reinsurance:

(vi) Services provided in respect of the acceptance of deposits or banking:

(vii) The buying, whether as principal or agent, of any credit instrument from any person:

(viii) The discounting, whether as principal or agent, of any credit instrument:

(ix) The provision of credit under any hire purchase agreement or under any contract under which a person bails or agrees to bail goods (whether or not with an option to purchase):

(b) The making of arrangements for the lending of money or the granting of credit:

“Hire purchase agreement” has the meaning given to it by section 2 of the Hire Purchase Act 1971 except that, for the purposes of these regulations,—

(a) That term includes an agreement made otherwise than at retail; and

(b) The exclusion effected by paragraph (b) of the definition of that term does not apply:

“Interest”, in relation to any loan, includes all money which is paid or otherwise provided to the lender in relation to the loan and which is in excess of the amount of the loan:

“New financial service”, in relation to a financial service provided or to be provided by a supplier, means a financial service not previously provided by him:

“Price”, in relation to the performance of any financial service, includes—

(a) Every valuable consideration whatsoever, whether direct or indirect; and

(b) Any consideration which in effect relates to the performance of any financial service, although ostensibly relating to any other matter or thing; and

(c) The amount of any discount paid or given on the sale or purchase of any credit instrument; and

(d) Any interest:

“Private mortgage loan” means any loan—

(a) Which is made or is to be made by a person who is not a financial institution; and

(b) Which is secured, in whole or in part, or is to be secured, in whole or in part, by way of a mortgage or charge over property:

“Rate of interest”, in relation to any loan, means the rate that 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:

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

“Supplier” means any person who provides a financial service or financial services.

(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. Administration of regulations—Any powers or functions which the Minister of Trade and Industry may exercise under the Act for the purposes of these regulations shall be exercised by the Minister of Finance.

5. Application of regulations—(1) Regulation 6 of these regulations applies to—

(a) Any supplier who, at any time while these regulations are in force, provides any financial service that has a value exceeding \$10,000; and

(b) Any supplier who, at any time while these regulations are in force, provides any financial service that has a value which, when aggregated with the values of all other financial services being provided by that supplier, exceeds \$10,000.

(2) Regulation 7 of these regulations applies to any person who, at any time while these regulations are in force, makes any private mortgage loan.

(3) For the purposes of subclause (1) of this regulation, the value of a financial service is made up of,—

(a) In the case of the lending of money or the granting of credit, the amount of each loan or the amount of credit granted:

(b) In the case of the depositing of money, the amount of each deposit:

(c) In the case of the guaranteeing of any money lent or credit granted, the total amount for which the supplier may become liable in accordance with the terms of each guarantee:

(d) In the case of the provision of life insurance, life assurance, or life reinsurance, the amount insured under each policy:

(e) In the case of services provided in respect of the acceptance of deposits or banking, the total amount of the deposits accepted or the total amount received by way of banking:

(f) In the case of the discounting of any credit instrument, the amount of the obligation to pay which is acknowledged by each credit instrument:

(g) In the case of the provision of credit under any hire purchase agreement or contract of bailment, the amount of the market value of the goods.

(4) For the purposes of subclause (1) of this regulation, the value of financial services provided or made by any company shall be deemed to include the value of financial services provided or made by any related company.

6. Notification, in relation to financial services, of proposed increases in prices or of proposed prices—(1) Before any supplier to whom this regulation applies increases the price of any financial service provided by that supplier in New Zealand or provides any new financial service in New Zealand, that supplier shall deliver to the Head Office of the Reserve Bank at Wellington a notice in writing stating,—

(a) In the case of an increase in the price of a financial service, the reasons for the price increase and itemised details of the financial figures on which the calculation of the price increase is based; or

(b) In the case of a new financial service, the price of the service and itemised details of the financial figures on which the price is based.

(2) Where the Reserve Bank does not, within 28 days of receiving a notice pursuant to subclause (1) of this regulation, notify the supplier that the Reserve Bank objects to the proposed price increase or, in the case of a new financial service, the price, the supplier may increase the price to the extent so notified or, in the case of a new financial service, charge the price so notified; but, if the Reserve Bank so objects within that period, the supplier shall not increase that price except to the extent approved by the Reserve Bank or, in the case of a new financial service, shall not charge for that service a price that is higher than the price approved by the Reserve Bank.

(3) Subject to regulation 11 of these regulations, any decision of the Reserve Bank on any such notification shall be final and conclusive until revoked or amended by the Reserve Bank.

(4) For the purposes of this regulation, any price offered to and accepted by a supplier to whom this regulation applies shall be deemed to have been determined by the supplier.

(5) Any notification under this regulation shall be in such form as the Reserve Bank requires or approves.

7. Restrictions on interest payable in respect of private mortgage loans—No person to whom this regulation applies shall make any private mortgage loan at a rate of interest that,—

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

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

8. Limitation on right to increase interest payable in respect of private mortgage loans—No person shall, in the case of any private mortgage loan, whether made before or after the 10th day of November 1983, increase the rate of interest payable in respect of that private mortgage

loan above the maximum rate of interest that would, in the case of a private mortgage loan made at any time while these regulations are in force by a person to whom regulation 7 of these regulations applies, be applicable under that regulation.

9. Criteria to be observed by Reserve Bank—In considering under regulation 6 of these regulations any proposed increase in the price of any financial service, or, in the case of a new financial service, its price,—

- (a) The Reserve Bank shall, in addition to such matters as it is empowered or required to have regard to by any other Act, have regard to the economic policies of the Government which, in relation to the economic stability of New Zealand, are transmitted in writing from time to time to the Reserve Bank by the Minister of Finance; and
- (b) The Reserve Bank shall, if it thinks fit, take into account—
 - (i) The profits of the supplier in relation to the shareholders' funds of, or, as the case may be, to the equity capital invested by the proprietor or partners in, the whole of the supplier's business (or, if the Reserve Bank thinks fit, any particular section of it); or
 - (ii) The assets employed in, or the annual sales of, the whole of the supplier's business (or, if the Reserve Bank thinks fit, any particular section of it); and
- (c) The Reserve Bank shall, if it thinks fit, take into account the extent to which the profits of the supplier in relation to the items mentioned in subparagraphs (i) and (ii) of paragraph (b) of this subclause could be limited without the financial stability and economic viability of his business (or, if the Reserve Bank thinks fit, of any particular section of it) being affected.

10. Review of prices of financial services—(1) Notwithstanding anything in these regulations, the Reserve Bank may at any time of its own motion or at the request of the Minister of Finance, inquire into the prices charged for any financial service by any supplier.

(2) Where, after investigation pursuant to subclause (1) of this regulation, the Reserve Bank is of the opinion, on such evidence as it considers sufficient and in relation to such considerations as it thinks relevant, that the price or the proposed price for any financial service is excessive, the Bank may report its opinion to the Minister of Finance with such recommendations as the Reserve Bank thinks fit.

11. Appeals—(1) Any supplier who is dissatisfied with any decision or requirement of the Reserve Bank made or imposed under any provision of regulation 6 of these regulations may appeal, within a period not later than 28 days after being notified in writing of that decision or requirement, to the Commerce Commission by giving to that Commission a written notice of appeal.

(2) The Commerce Commission may determine any appeal under this regulation in such manner as it thinks fit, and its determination shall be final:

Provided that the Commerce Commission shall have regard to all matters that the Reserve Bank is required to take into account in making its determination that is the subject of the appeal.

(3) Unless the Commerce Commission otherwise directs, the decision or requirement appealed against shall remain in force pending determination of the appeal.

12. 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.

13. Reserve Bank may determine alternative method of compliance—(1) On the application by any supplier or on its own motion, the Reserve Bank may, where it considers that it would be impracticable or unreasonable for any supplier, or any class or classes of suppliers to comply with any provision of subclause (1) or subclause (2) of regulation 6 of these regulations, dispense with that provision in relation to the supplier or class or classes of suppliers, and determine an alternative basis upon which the supplier or class or classes of suppliers shall give the notifications required for the purpose of subclause (1) or subclause (2) of regulation 6 of these regulations.

(2) The Reserve Bank may at any time revoke any dispensation granted under subclause (1) of this regulation or amend or revoke any determination made under that subclause.

14. Exemption in respect of deposits with trading banks or financial institutions—Nothing in regulation 6 of these regulations applies in respect of an increase in the price of a financial service or the provision of a new financial service if the financial service consists of the depositing of money with a trading bank or financial institution.

15. Exemption in respect of loans, credit, and deposits—Nothing in regulation 6 of these regulations applies in respect of an increase in the price of a financial service or the provision of a new financial service if—

- (a) The financial service falls within any of the categories set out in subparagraph (i) or subparagraph (ii) or subparagraph (iii) of paragraph (a) of the definition of the term “financial service” in regulation 3 (1) of these regulations; and
- (b) The supplier of that financial service is not a financial institution; and
- (c) The rate of interest to be charged in respect of that financial service does not exceed 18 percent per annum.

16. Offences—Without limiting the provisions of section 18 of the Economic Stabilisation Act 1948, every person commits an offence against these regulations, and is liable accordingly to the penalties specified in subsection (3) of that section, who—

- (a) Being a supplier, contravenes subclause (1) or subclause (2) of regulation 6 of these regulations; or
- (b) Contravenes regulation 7 or regulation 8 or regulation 12 of these regulations.

17. Acts not affected—Except as provided in the proviso to regulation 11 (2) of these regulations, nothing in these regulations affects—

- (a) Any power exercisable by the Examiner of Commercial Practices or by the Commerce Commission or any duty imposed on any person under the Commerce Act 1975; or
- (b) Any power exercisable by any person under the Reserve Bank of New Zealand Act 1964 or any duty imposed on any person under that Act.

18. Revocations—The following regulations are hereby revoked:

- (a) The Financial Services Regulations (No. 2) 1982*;
- (b) The Financial Services Regulations (No. 2) 1982, Amendment No. 1†.

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

*S.R. 1982/181
†S.R. 1983/94

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 10 November 1983, replace the Financial Services Regulations (No. 2) 1982.

These regulations are new in that they now contain, in addition to the provisions that were to be found in the Financial Services Regulations (No. 2) 1982, provisions limiting the interest that may be charged in respect of "private mortgage loans".

A private mortgage loan is defined as any loan—

- (a) Which is made or is to be made by a person who is not a financial institution; and
- (b) Which is secured, in whole or in part, or is to be secured, in whole or in part, by way of a mortgage or charge over property.

The maximum permissible rate of interest that applies where a private mortgage loan is secured by a first mortgage or first charge is 11 percent per annum.

The maximum permissible rate of interest that applies where a private mortgage loan is secured by a mortgage other than a first mortgage or first charge is 14 percent per annum.

In the case of mortgage loans made by financial institutions, similar limitations are being imposed by regulations made under the Reserve Bank of New Zealand Act 1964.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 10 November 1983.

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