



## THE FINANCIAL SERVICES REGULATIONS (NO. 2) 1983

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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 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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#### ANALYSIS

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#### REGULATIONS

**1. Title**—These regulations may be cited as the Financial Services 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,—

“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:

“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:

“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—

(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:

“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”—

- (a) Means any loan—
  - (i) Which is made or is to be made by a person who is not 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) 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
  - (ii) 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
  - (iii) 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:

“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 regulation 6**—(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) 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.

(3) 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**—(1) No person 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, 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 other than a first mortgage, exceeds 14 percent per annum.

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

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

(4) A person who—

- (a) Extends or agrees to extend any private mortgage loan beyond the expiry of its term; or
- (b) Agrees to allow a private 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 private mortgage loan.

**8. Limitation on right to increase interest payable in respect of private mortgage loans**—(1) No person shall, in the case of any private mortgage loan, whether made before or after the commencement of these regulations, 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, be applicable under regulation 7 (1) of these regulations.

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

- (a) If, in the case of a private mortgage loan in respect of which the maximum rate applicable is that specified in regulation 7 (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 private mortgage loan in respect of which the maximum rate of interest applicable is that specified in regulation 7 (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.

**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. Revocation**—The Financial Services Regulations 1983\* are hereby revoked.

**19. Transitional provision**—Where, before the 10th day of November 1983, a person (in this regulation called “the mortgagee”)—

- (a) Has made an offer to make a private mortgage loan to any other person; or
- (b) Has entered into a contract to make a private mortgage loan to any other person,—

nothing in regulation 7 of these regulations shall apply in respect of any private mortgage loan made by the mortgagee to that other 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.



## 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, replace the Financial Services Regulations 1983. The regulations expire with the close of 29 February 1984.

These regulations 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"—

(a) Means any loan—

(i) Which is made or is to be made by a person who is not 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) 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

(ii) 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

(iii) 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 private mortgage loan is secured by a first mortgage is 11 percent per annum. However a private 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 private mortgage loan is secured by a mortgage other than a first mortgage is 14 percent per annum. In this case such a private 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 19*) which makes it clear that where, before the 10th day of November 1983 (the date of commencement of the Financial Services Regulations 1983), a person (described for the purposes of *regulation 19* as "the mortgagee")—

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

(b) Has entered into a contract to make a private mortgage loan to any other person,— nothing in *regulation 7* of the regulations shall apply in respect of any private mortgage loan made by the mortgagee to that other 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 mortgage loans made by financial institutions, similar limitations are being imposed by regulations made under the Reserve Bank of New Zealand Act 1964.

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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.