

1974/117



THE OVERSEAS INVESTMENT REGULATIONS 1974

DENIS BLUNDELL, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 20th day of May 1974

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Overseas Investment Act 1973, 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 and commencement—(1) These regulations may be cited as the Overseas Investment Regulations 1974.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

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

“The Act” means the Overseas Investment Act 1973:

“Authorised money-market dealer” has the same meaning as in the Reserve Bank of New Zealand Act 1964:

“Commission” means the Overseas Investment Commission constituted by the Act:

“Head office”, in relation to a body corporate, means the place from which its administrative management is conducted:

“Interest in a unit trust” has the same meaning as in the Unit Trusts Act 1960:

“Issue” includes re-issue:

“Minister” means the Minister of Finance; and includes any person for the time being authorised to exercise or perform any of the powers or functions of the Minister:

“Money” includes the bank notes and other currency, postal notes and money orders of New Zealand or any other country; and also includes promissory notes and bills of exchange:

“Nominee”, in relation to an overseas person, means—

(a) Any company directly or indirectly controlled by the overseas person or by any company that is the nominee of the overseas person; or

(b) Any company that directly or indirectly controls or is interested in, beneficially or otherwise, any shares in the capital of the overseas person or of a nominee of the overseas person or that is entitled, directly or indirectly, to any part of the profits of the overseas person or a nominee of the overseas person; or

(c) Any person subject to the direction or control, whether direct, indirect, general, or specific, of any company that is an overseas person or the nominee of an overseas person, whether or not the direction or control is legally enforceable; or

(d) Any person who, in any transaction, acts as agent, trustee, representative, or in any way on behalf of the overseas person or a nominee of the overseas person, or is in any way subject to the direction, control, or influence of the overseas person or a nominee of the overseas person whether or not, in respect of the transaction, the relationship between that person and the overseas person or nominee is such as to confer legally enforceable rights on either party; and “nominee”, in relation to any other person mentioned in these regulations, has a corresponding meaning:

“Offer” includes any proposal to make an offer or invitation to make an offer:

“Offeree” means a holder of shares which are included in a take-over offer:

“Offeree company” means a company whose shares or any of them, are proposed to be acquired under a take-over scheme:

“Offeror” means—

(a) A person who makes a take-over offer, whether in concert or jointly with any other person or not and whether by himself or by a nominee; or

(b) Any overseas person to whom a take-over offer has been made in respect of shares held by an offeree, whether in concert or jointly with any other person or not and whether by himself or by a nominee:

“Overseas investment” means any investment in New Zealand by an overseas person; and includes any proposal for overseas investment in New Zealand by an overseas person:

“Overseas person” means—

(a) Any person not ordinarily resident in New Zealand; or

(b) Any company or body corporate that is incorporated outside New Zealand, or any company within the meaning of the Companies Act 1955 that is for the purposes of that Act a subsidiary of any company or body corporate incorporated outside New Zealand; or

(c) Any company within the meaning of the Companies Act 1955, in which the right to exercise or control the exercise of 25 percent or more of the voting power at any general meeting of the company is held by any overseas person or overseas persons—

and includes the nominee of any overseas person whether the nominee is himself an overseas person or not:

“Person” includes any individual person, a corporation sole, a corporation aggregate, and any association or combination of individual persons or corporate or unincorporate bodies:

“Property” has the same meaning as in the Property Law Act 1952:

“Register” includes any book or form of record in which securities are registered:

“Registered”, in relation to any security, includes inscribed:

“Registered in New Zealand” means registered in a register in New Zealand:

“Secretary” means the Secretary of the Overseas Investment Commission:

“Securities” includes shares, stock, bonds, debentures, debenture stock, mortgages, liens, treasury bills, coupons or warrants representing dividends or interest and life or endowment insurance policies in whatever currency the securities are expressed and whether they are situated in New Zealand or elsewhere; and also includes any document or means whereby the right to the ownership or provision of any money or security or any interest therein may be exercised; but does not include promissory notes or bills of exchange:

“Share” includes stock, any beneficial interest in any share, and any perpetual debenture or perpetual debenture stock:

“Take-over offer” means an offer whether in writing or not relating to the acquisition of shares under a take-over scheme; and includes an offer by the holder or holders of any shares to transfer or sell those shares:

“Take-over scheme” means any offer relating to the acquisition or disposition of any shares in a company if those shares together with other shares, if any, to which the offeror is already beneficially entitled or in which the offeror already has a beneficial interest, carry the right to exercise or control the exercise of 25 percent or more of the voting power at any general meeting of the offeree company:

“Unit trust” has the same meaning as in the Unit Trusts Act 1960.

(2) For the purposes of these regulations, the expression “holding company” and the term “subsidiary” shall have the same meanings as in the Companies Act 1955, but, subject to the meaning of the expression “overseas person” as defined for the purposes of these regulations in subclause (1) of this regulation, for the purposes of interpreting the expression “holding company” and the term “subsidiary” as they otherwise occur in these regulations, section 158 of the Companies Act 1955 shall be read as if in subparagraph (ii) of paragraph (b) of subsection (1) the word “one-quarter” was substituted for the word “half”.

(3) The reference in the definition of the expression “take-over scheme” in subclause (1) of this regulation to shares to which the offeror is beneficially entitled shall be read as including a reference to—

- (a) Shares held by any person or body corporate as nominee of the offeror; and
- (b) Shares in or over which the offeror has any right, title, interest or control, or in respect of which he has any control over the vote; and
- (c) Shares which the offeror is or will be entitled to acquire under any option or on the fulfilment of any condition under any agreement relating to the acquisition of any other shares in the offeree company; and
- (d) If the offeror is a company within the meaning of the Companies Act 1955, shares to which any subsidiary or holding company of the offeror or any other subsidiary of the offeror’s holding company is already beneficially entitled, or which any such subsidiary or holding company is or will be entitled to acquire in any such manner as aforesaid.

(4) For the purposes of these regulations, an individual shall be deemed to be ordinarily resident in New Zealand at any time if at the time—

- (a) He is domiciled in New Zealand; or
- (b) He is residing in New Zealand and his usual place of abode is, and has been for the immediately preceding period of 12 months, in New Zealand, whether or not he has been occasionally or temporarily absent from New Zealand during that period.

(5) For the purposes of these regulations—

(a) A body corporate shall be deemed to be ordinarily resident in New Zealand if it is incorporated in New Zealand or has its head office in New Zealand:

(b) Where any body corporate incorporated outside New Zealand and carrying on business through a branch or branches in New Zealand does not have its head office in New Zealand, each such branch shall be deemed to be a separate person and shall, together with the person in New Zealand for the time being having control of the business in New Zealand, be deemed to be ordinarily resident in New Zealand; and such persons shall in respect of the branch be jointly and severally liable accordingly; but nothing in this paragraph shall be construed to relieve the body corporate from any obligation or liability to any penalty under the Act or under these regulations.

(6) Any reference in these regulations to the borrowing of money includes—

(a) The making of any arrangement by which a sum that would otherwise be payable at any date is payable at a later date: and in particular includes a reference to the making of any arrangement by which the whole or any part of the price of any property is allowed to remain unpaid either for a fixed period or indefinitely; or

(b) The acceptance of any bill of exchange or the issue of any promissory note except where the acceptance or issue is in direct payment for goods or services provided to the acceptor or issuer, and the bill of exchange or promissory note is due and payable within 90 days from the date of its acceptance or issue.

(7) For the purposes of subclause (6) of this regulation—

(a) An arrangement to provide any guarantee or to mortgage or charge any property to secure the repayment of any sum borrowed before the arrangement is made, being a sum which is already due when the arrangement is made or which is payable not later than 6 months after the arrangement is made, shall be deemed to be an arrangement by which that sum is payable at a date later than that on which it would otherwise have been payable:

(b) A sum which at the time of or by virtue of the making of any arrangement is payable on demand or on the expiration of a fixed period after demand shall be deemed to be payable at the time of the making of the arrangement or, as the case may require, on the expiration of the fixed period after the making of the arrangement, notwithstanding that no demand has been made.

(8) For the purposes of these regulations, a person shall be deemed to borrow or raise money outside New Zealand—

(a) If the money borrowed is received in or is repayable in a currency other than New Zealand currency; or

(b) If the money borrowed outside New Zealand is made available either outside New Zealand or in New Zealand; or

- (c) In the case of any arrangement to which subclause (6) of this regulation applies, if the money would but for the arrangement have been payable to a person not ordinarily resident in New Zealand.

(9) For the purposes of these regulations, a person shall be deemed to borrow money outside New Zealand if the money is borrowed outside New Zealand on the security of property in New Zealand.

(10) For the purposes of these regulations, a person shall be deemed to borrow money outside New Zealand if, being a person carrying on any business, he sells any land or interest in land in New Zealand to a person not ordinarily resident in New Zealand on terms providing a right for the vendor or any nominee of the vendor to continue in possession or to resume or take possession of the land or any part of it (whether under a lease or otherwise) and also providing a right for the vendor or any nominee of the vendor to repurchase the land or any part of it.

(11) For the purposes of these regulations, a person shall be deemed to borrow money in New Zealand if—

- (a) The money borrowed is received in or is repayable in New Zealand currency; or
- (b) The money is borrowed in New Zealand on the security of property outside New Zealand; or
- (c) The person, being a person carrying on any business, sells any land or interest in land to a person ordinarily resident in New Zealand on terms providing a right for the vendor or any nominee of the vendor to continue in possession or to resume or take possession of the land or any part of it (whether under a lease or otherwise) and also providing a right for the vendor or any nominee of the vendor to repurchase the land or any part of it.

(12) Nothing in subclauses (6) to (11) of this regulation shall be construed to limit the generality of any references in these regulations to the borrowing or raising of money.

PART I

BORROWING OR RAISING MONEY

3. Borrowing or raising money outside New Zealand—(1) Except with the consent of the Minister, it shall not be lawful for any body corporate incorporated in New Zealand, or any unincorporated body of persons (other than a partnership in which none of the partners is a body corporate incorporated in New Zealand) carrying on business in New Zealand, or any person acting as nominee for or on behalf of any such body corporate or unincorporated body—

- (a) To borrow money outside New Zealand; or
- (b) To raise money outside New Zealand by the issue, whether in New Zealand or elsewhere, of any shares in that body; or
- (c) To make any call in respect of any shares issued by that body to an overseas person; or

- (d) To issue for any purpose shares in or securities of that body to a person not ordinarily resident in New Zealand or, if the body is a body corporate and is not incorporated in New Zealand, to issue for any purpose shares in or securities of that body corporate if the shares or securities are or are to be, registered in New Zealand; or
- (e) To allot for any purpose shares subscribed for in the memorandum of association or memorandum of subscription of any such body corporate by an overseas person:
- (f) To issue for any purpose shares in or securities of that body to an overseas person if the effect of the issue will be to make the body issuing the shares or securities an overseas person.

(2) Except with the consent of the Minister it shall not be lawful for any person to circulate outside New Zealand any offer for subscription, sale, or exchange of any shares in or securities of any body corporate incorporated in New Zealand.

(3) This regulation shall apply in relation to interests in unit trusts as it applies in relation to shares in a body corporate, and as if—

- (a) Any reference to the issue of shares in a body corporate by that body corporate were a reference to an issue of interests in a unit trust; and
- (b) Any reference to shares in a body corporate incorporated in New Zealand were a reference to interests in a unit trust issued for the purposes of the unit trust.

(4) Any reference in this regulation to the issue of securities includes a reference to the issue of deposit receipts for money lent (not being deposit receipts issued by a trading bank or the Post Office Saving Bank or a trustee savings bank within the meaning of the Trustee Savings Banks Act 1948 or a private savings bank established under the Private Savings Banks Act 1964). For the purposes of this subclause a document shall be deemed to be a deposit receipt for money lent if it is an acknowledgment of liability to repay money lent or is a promise to repay money lent, whether or not the document refers to the lending of money and whether it is in the form of a promissory note or in any other form.

4. Borrowing or raising money in New Zealand by overseas persons—

(1) Except with the consent of the Minister, it shall not be lawful for any overseas person,—

- (a) To borrow money in New Zealand; or
- (b) To raise money in New Zealand by the issue, whether in New Zealand or elsewhere, of any shares in any company or body corporate which is an overseas person; or
- (c) To make any call in respect of any shares issued to a person ordinarily resident in New Zealand by any company or body corporate which is an overseas person.

(2) Nothing in this regulation shall prevent or affect in any way any transaction in respect of a deposit accepted in good faith in the ordinary course of business—

- (a) By any trading bank within the meaning of the Reserve Bank of New Zealand Act 1964; or

- (b) By any private savings bank within the meaning of the Private Savings Banks Act 1964; or
- (c) By any authorised money-market dealer within the meaning of the Reserve Bank of New Zealand Act 1964.

5. Issue of prospectus, etc.—(1) It shall not be lawful for any person to issue for circulation outside New Zealand any prospectus or other document offering for subscription or publicly offering for sale any shares in or securities of any body corporate incorporated in New Zealand unless the prospectus or document includes a statement that the consent of the Minister has been obtained to the issue or offer of the shares or securities or, as the case may require, a statement that the consent of the Minister is not required to the issue or offer of the shares or securities.

(2) It shall not be lawful for any person to issue for circulation in New Zealand any prospectus or other document offering for subscription or publicly offering for sale any shares in or securities of any company or body corporate that is an overseas person unless the prospectus or document includes a statement that the consent of the Minister has been obtained to the issue of the shares or securities or, as the case may require, that the consent of the Minister is not required to the issue of the shares or securities.

PART II

OVERSEAS TAKE-OVERS

6. Secretary of the Commission—For the purposes of this Part of these regulations there shall be a Secretary of the Commission who shall be an officer of the Reserve Bank of New Zealand.

7. Notice to the Commission of take-over offers by or to overseas persons—(1)—

- (a) Where a take-over offer is made or proposed to be made to an offeree by any overseas person, the offeror or his nominee shall, on or before the date of the offer, send to the Commission, at the Reserve Bank of New Zealand at Wellington, notice in writing stating that the offer is being made or, as the case may require, is proposed to be made; or
- (b) Where a take-over offer is made or proposed to be made by or on behalf of an offeree to any overseas person who is an offeror, the offeror or his nominee shall send to the Commission at the Reserve Bank of New Zealand at Wellington, notice in writing stating that the offer has been or is proposed to be made.

(2) The notice shall—

- (a) Specify an address for service to which any notice or other document addressed to the offeror or his nominee under these regulations may be sent;
- (b) State the date of the offer, if made;
- (c) State the name, occupation, and address of each offeror and if the offeror is a body corporate, its name, the address of its registered office and a summary of its principal activities:

- (d) State whether or not the offer is conditional on acceptances being received in respect of a minimum number of shares, and, if so, that minimum number:
- (e) Specify an estimate of the total consideration expected to be paid if the take-over offer is accepted, and whether and to what extent such consideration is to be paid in cash or in shares or otherwise; and if the whole or any part of that consideration is to be paid in cash, whether and to what extent the payment is to be made from overseas funds or from funds held in New Zealand:
- (f) Where part or all of the consideration is to be in the form of shares state whether the shares offered are, or in the case of shares to be issued will be, fully paid up; and, if not, to what extent they are or will be paid up, and, if there is a fixed date and amount for payment of outstanding calls, the date and amount of each such call:
- (g) Where any offeror is a company or other body corporate whether incorporated in New Zealand or elsewhere, have attached a copy of the offeror's latest financial accounts:
- (h) Have attached a copy of the latest accounts and reports required to be laid before the offeree company in general meeting pursuant to sections 152 to 161 of the Companies Act 1955:
- (i) Include a statement whether the offeree company or any of its subsidiary companies owns any land or holds any interest in land the acquisition of which is subject to control in terms of the Land Settlement Promotion and Land Acquisition Act 1952:
- (j) State whether any offeror (being a company or other body corporate) is a subsidiary of any other company or body corporate, and, if so, state the name and the address of the registered office of its holding company:
- (k) State the number, description, and amount of any shares in the offeree company to which each of the offerors is beneficially entitled; or, if there are no such shares, include a statement to that effect; and for the purposes of this paragraph the shares to which each of the offerors is beneficially entitled shall include—
 - (i) Shares to which the offeror is or will be entitled to acquire under any option or on the fulfilment of any condition under any agreement relating to the acquisition of any other shares in the offeree company; and
 - (ii) If the offeror is a company within the meaning of section 158 of the Companies Act 1955 shares to which any subsidiary or holding company of the offeror or any other subsidiary of the offeror's holding company is already beneficially entitled, or which any such subsidiary or holding company is or will be entitled to acquire in any such manner as aforesaid:
- (l) Where any offeror is beneficially entitled to any shares in any company (other than the offeree company) incorporated in New Zealand, state the name and the address of the registered office of that company and particulars of the shares so held:

(m) Where the offeree company is a private company, state the names and addresses of the present shareholders, and the number and class of shares held by each shareholder, in that company.

(3) For the purposes of subclause (2) of this regulation, the reference in paragraph (k) of that subclause to shares to which each of the offerors is beneficially entitled shall be read as including, in addition to the matters set out in that paragraph, a reference to shares to which subclause (3) of regulation 2 of these regulations apply.

8. Secretary to register notice—(1) On receipt of a notice that complies with regulation 7 of these regulations, the Secretary shall forthwith record the notice in a register to be kept by him for the purpose, and notify the offeror or his nominee, in writing, of the date of registration.

(2) On receipt of a notice that does not comply with regulation 7 of these regulations, the Secretary may, at his discretion, record the notice in the register to be kept by him and shall then notify the offeror or his nominee in writing that the notice has been registered and the date of registration.

9. Supply of further information and particulars—The offeror or his nominee shall from time to time supply to the Commission such further information and particulars in relation to the take-over offer as may reasonably be required for the purpose of enabling the Minister to exercise his powers under these regulations.

10. Consideration of notice—(1) Within 6 weeks after the date of the registration of the notice under regulation 8 of these regulations, the Minister shall determine whether or not he will grant his consent to the take-over offer (whether made or proposed to be made).

(2) On such determination being made, notice in writing shall be given forthwith to the offeror or his nominee of the determination.

11. Offers to be made subject to these regulations—(1) Unless before any take-over offer is made the offeror or his nominee has received notice in writing stating that the Minister's consent has been granted every such offer made shall state—

- (a) That the offer is made subject to these regulations; and
- (b) That notice of the making of the offer has been given to the Commission under these regulations; and
- (c) That the offer will become effective only pursuant to regulation 12 of these regulations.

(2) If before any take-over offer is made the offeror or his nominee receives notice in writing stating that the Minister's consent has been granted every such offer made shall state that fact.

12. When take-over offer to become effective—(1) Any take-over offer to which regulation 11 (1) of these regulations applies shall become effective immediately—

- (a) On the receipt by the offeror or his nominee of notice in writing that the Minister's consent has been granted; or

(b) If no such notice, and no notice of the refusal of such consent has been received by the offeror or his nominee within 6 weeks after the date of the registration, under regulation 8 of these regulations, of the notice of the take-over offer, then at the expiry of the said period of 6 weeks.

(2) When the take-over offer becomes effective under this regulation, the offeror or his nominee shall forthwith give notice in writing to every offeree stating that the offer has become effective in accordance with these regulations, and, where the Minister's consent has been granted upon or subject to any terms or conditions, stating those terms and conditions so far as they affect the terms of the offer as between the offeror and offeree.

13. When take-over offer deemed revoked—Except as provided in regulation 12 (1) (b) of these regulations, every take-over offer to which regulation 11 (1) of these regulations applies shall be deemed to be revoked on the receipt by the offeror or his nominee of notice in writing that the Minister's consent has been refused; and the offeror or his nominee shall forthwith give notice in writing to every offeree stating that the offers have been revoked in accordance with these regulations.

14. Notices to offeror at address for service—Every notice or other document sent to any offeror or his nominee for any of the purposes of these regulations may be delivered or posted by letter addressed to him at the address for service specified in the notice under regulation 7 of these regulations, and if so posted the notice shall be deemed to have been served at the time when the letter would be delivered in the ordinary course of post.

15. Contract to be unlawful and void in certain circumstances—(1) Subject to regulation 20 of these regulations, where a take-over offer is made and neither the Minister's consent is granted pursuant to regulation 12 (1) (a) of these regulations, nor is the take-over offer effective under regulation 12 (1) (b) of these regulations, any contract for the sale of shares resulting from the acceptance of any such offer and any transfer of those shares consequent on such acceptance, shall be unlawful and void.

(2) The directors of the offeree company may refuse to register any transfer of shares in the company if they have reasonable cause to believe that the transfer is unlawful under this regulation.

PART III

COMMENCING, CONTINUING, OR EXPANDING BUSINESS IN NEW ZEALAND

16. Overseas companies commencing business in New Zealand—Except with the consent of the Minister, it shall not be lawful for any body corporate incorporated outside New Zealand and not lawfully carrying on business in New Zealand at the commencement of these regulations to register or carry on business in New Zealand.

17. Acquisition of assets—(1) Except with the consent of the Minister it shall not be lawful for any overseas person to enter into any transaction or make any contract or arrangement, whether orally or in writing, relating to the acquisition by any overseas person of all or substantially all of the property in New Zealand used in carrying on a business in New Zealand:

Provided nothing in this regulation shall affect any transaction, contract or arrangement where the total consideration to be paid in relation to the acquisition by any overseas person, of all or substantially all of the property in New Zealand used in carrying on a business in New Zealand, does not exceed \$100,000.

(2) For the purposes of this regulation, the expression “property in New Zealand used in carrying on a business” includes any goodwill and any other intangible assets used in connection with the business.

PART IV

MISCELLANEOUS

18. Evasion of these regulations—No person shall enter into any transaction or make any contract or arrangement, whether orally or in writing, for the purpose of or having the effect of, in any way, directly or indirectly, defeating, evading or circumventing the operation of these regulations in any respect.

19. Granting or refusal of consent—(1) Any consent for the purposes of these regulations may—

- (a) Be granted in respect of such transactions or class or classes of transactions or of persons as the Minister may determine, or to any person in respect of any specified transaction:
- (b) Be granted wholly or partly and either unconditionally or subject to such conditions as the Minister thinks fit:
- (c) Be refused.

(2) Any consent granted under subclause (1) of this regulation to any transaction to which these regulations relate may at any time be revoked by the Minister; and any condition subject to which any such consent is granted may from time to time be revoked, varied, or added to by the Minister.

(3) Every person who applies for any consent under subclause (1) of this regulation shall furnish such information and particulars in such form as the Minister or Commission may from time to time require.

(4) Where any consent is granted or refused under subclause (1) of this regulation to a proposal to which Part II of these regulations relates the Commission shall give notice of the grant or refusal of consent to the offeror or his nominee.

20. Exemptions—(1) The Minister may in his discretion exempt any persons or class or classes of persons from the whole or any part of the requirements of these regulations.

(2) Any such exemption may at any time in like manner be varied or revoked.

21. Notices—(1) The Minister or the Commission may give notice in the *Gazette* of the exercise of any powers under these regulations, or of any direction or determination given or made by the Minister or Commission as the case may be under these regulations, and all persons shall be bound thereby.

(2) The Minister or Commission may, without any notice in the *Gazette*, give notice to any person of the exercise of any powers under these regulations, or of any direction or determination given or made under these regulations, and every person to whom the notice is given shall be bound thereby.

(3) Except where otherwise specially provided, any notice required to be given to any person for the purposes of these regulations may be given by causing it to be delivered to that person, or to be left at his usual or last known place of abode or business or at the address specified by him in any application, notice, or other document received from him by the Minister or Commission or to be posted in a letter addressed to him at that place of abode or business or at that address.

(4) If any such notice is sent to any person by registered letter it shall be deemed to have been delivered to him when it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

(5) Except where otherwise specially provided, every notice under these regulations shall take effect when it is published or given, or at such later time as may be specified in that behalf in the notice.

(6) Any notice given under these regulations may at any time be varied or revoked by a subsequent notice.

22. Power of Minister or Commission to require information and production of books, etc.—(1) If the Minister or Commission has reason to suspect that any person has committed an offence against these regulations, either the Minister or the Commission may, by notice in writing, require that person or any other person, within such time as may be specified in the notice—

- (a) To furnish to the Minister or the Commission or any other person, any information, in relation to any transaction, which in the Minister's or Commission's opinion may furnish evidence in relation to that offence:
- (b) To produce to the Minister or Commission or any other person, any books or documents which may be in the possession or under the control of any such person and which in the Minister's or Commission's opinion may furnish evidence in relation to that offence.

(2) Any notice given pursuant to the provisions of subclause (1) of this regulation may specify the place or places at which any information, books, or documents are to be furnished or delivered, and any books, documents, or other information may be copied, and may be retained or impounded, by the person or persons to whom they are delivered pursuant to the notice.

23. Exchange Control Regulations 1965 not affected—Nothing in these regulations shall limit or affect the operation of the Exchange Control Regulations 1965.

24. Part I of Companies Amendment Act 1963 not affected—Nothing in these regulations shall limit or affect the operation of Part I of the Companies Amendment Act 1963 (which relates to take-over offers).

25. Revocations and savings—(1) The regulations specified in the Schedule hereto are hereby revoked.

(2) Notwithstanding anything in subclause (1) of this regulation, any consent or exemption in force at the commencement of these regulations shall continue to subsist in every way as if it had been given under and were subject to these regulations.

SCHEDULE
REGULATIONS REVOKED

Title	Serial Number
The Overseas Take-overs Regulations 1964	1964/221
The Overseas Take-overs Regulations 1964, Amendment No. 1	1969/269
The Overseas Take-overs Regulations 1964, Amendment No. 2	1971/145
The Capital Issues (Overseas) Regulations 1965	1965/157
The Capital Issues (Overseas) Regulations 1965, Amendment No. 1	1966/96
The Capital Issues (Overseas) Regulations 1965, Amendment No. 2	1968/3
The Capital Issues (Overseas) Regulations 1965, Amendment No. 3	1969/155

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 amend and consolidate the Overseas Take-overs Regulations 1964 and the Capital Issues (Overseas) Regulations 1965. The regulations are made pursuant to the Overseas Investment Act 1973.

Regulation 1 relates to the title of the regulations, and provides that they are to come into force on the day after the date of notification in the *Gazette*.

Regulation 2 relates to interpretation. Subclause (1) contains definitions. These are for the most part definitions of terms and expressions already defined in the Act, but for ease of reference the definitions are re-expressed in the regulations. The most important definitions are those of the term "nominee", and the expressions "overseas person", and "take-over scheme".

Part I of the regulations relates to the borrowing or raising of money outside New Zealand or inside New Zealand by overseas persons. Regulation 3 provides that except with the consent of the Minister of Finance it is not lawful for a body corporate incorporated in New Zealand or certain unincorporated bodies carrying on business in New Zealand, to borrow money outside New Zealand; or for any such body to raise money outside New Zealand by the issue of shares, or to make a call on shares issued to an overseas person; or for any body corporate to issue shares or securities to an overseas person, if the body is incorporated in New Zealand or the shares or securities are registered in New Zealand; or to issue shares or securities of any such body to an overseas person if the effect of the issue will be to make the body an overseas person; or for any person to circulate outside New Zealand an offer for subscription, sale, or exchange of shares in or securities of a body corporate incorporated in New Zealand. Regulation 3 applies to interests in a unit trust as it applies to shares in a body corporate, and references in the regulation to the issue of securities include references to the issue of certain deposit receipts.

Regulation 4 provides that, except with the consent of the Minister of Finance, it is not lawful for any overseas person to borrow money in New Zealand or for any company or body corporate, being an overseas person, to raise money in New Zealand by the issue of shares or to make any call on shares issued to a person ordinarily resident in New Zealand. This provision does not affect certain transactions by way of deposits accepted in good faith in the ordinary course of business by certain trading banks, private savings banks, and authorised money-market dealers.

Regulation 5 (1) forbids the issue for circulation outside New Zealand of any prospectus or like document offering shares or securities of a body corporate incorporated in New Zealand unless it states either that the Minister's consent has been obtained or that such consent is not required.

Regulation 5 (2) forbids the issue for circulation in New Zealand of any prospectus or like document offering shares or securities of a company or body corporate that is an overseas person unless it states either that the Minister's consent has been obtained or that such consent is not required.

Part II of the regulations provide for the registration by the Overseas Investment Commission of notice of all take-over offers made or proposed to be made by or to overseas persons.

Regulation 6 provides for the appointment of a Secretary of the Commission for the purposes of the regulations.

Regulation 7 requires that where any take-over offer is made or proposed to be made to an offeree by any overseas person the offeror must on or before the date of the offer, give notice of that fact to the Commission, and give the particulars required by subclause (2). The same particulars are required to be given by an offeror where a take-over offer is made or proposed to be made by or on behalf of an offeree to any overseas person.

Regulation 8 relates to registration of the notice and acknowledgment of its receipt by the Secretary.

Regulation 9 provides for the supply of such further information and particulars as may reasonably be required to enable the Minister to exercise his powers under the regulations.

Regulation 10 provides that the Minister shall determine within 6 weeks after the date of registration of the notice whether or not he will grant his consent to the take-over offer.

Regulation 11 (1) provides that unless before any take-over offer is made to any offeree by or on behalf of an overseas person the offeror or his nominee has received notice that the Minister's consent has been given or that he has determined that no further consideration is required, every such offer shall state that it is made subject to these regulations, that notice has been given to the Commission, and that the offer will become effective only pursuant to regulation 12 of these regulations. Regulation 8 (2) provides that where before the making of any such offer the offeror or his nominee receives notice that such consent has been given, the offer shall state the fact.

Regulation 12 provides that the offers will become effective on receipt by the offeror or his nominee of notice that consent has been granted; but if no such notice, and no notice of refusal of consent, is received within 6 weeks after the registration of the offeror's notice (under regulation 8) the offers will become effective at the expiry of that period. In either case the offeror is then to notify every offeree that the offers have become effective under the regulations, and to state in the notification any terms or conditions of the consent so far as they affect the terms of the offer as between the offeror and the offeree.

Regulation 13 provides that if within 6 weeks after the date of registration of the offeror's notice the offeror or his nominee receives notice that the Minister's consent has been refused, every offer to which regulation 11 (1) applies is deemed to be revoked, and the offeree is to be notified accordingly.

Regulation 14 relates to addresses for service of notices.

Regulation 15 provides that subject to regulation 20 of these regulations where neither the Minister's consent is granted pursuant to regulation 12 (1) (a) of these regulations nor is the take-over offer effective under regulation 12 (1) (b) of these regulations, any contract for the sale of shares or any shares resulting from the acceptance of any such offer, and any consequent transfer of shares, is unlawful and void. The directors of the offeree company may refuse to register any transfer if they have reasonable cause to believe that the transfer is unlawful.

Part III of the regulations relates to the commencement, continuation, or extension of business by overseas persons in New Zealand. It is unlawful for any body corporate incorporated outside New Zealand and not lawfully carrying on business in New Zealand at the commencement of these regulations to register or carry on business in New Zealand. Except with the consent of the Minister it is unlawful for an overseas person to make any arrangement relating to the acquisition by an overseas person of all or substantially all the assets in New Zealand used in carrying on a business in New Zealand unless those assets do not exceed \$100,000.

Part IV of the regulations relates to miscellaneous matters including the giving of notices, the power to require information, and granting or refusal of any consent or exemption for the purposes of the regulations. The Exchange Control Regulations 1965 and Part I of the Companies Amendment Act 1963 remain unaffected. The Overseas Take-overs Regulations 1964 and the Capital Issues (Overseas) Regulations 1965 are revoked, but a savings clause is included to cover consents and exemptions in force at the commencement of these regulations.

Issued under the authority of the Regulations Act 1936.

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