

1978/79



**THE OVERSEAS INVESTMENT REGULATIONS 1974,
AMENDMENT NO. 1**

—

KEITH HOLYOAKE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 28th day of March 1978

Present:

THE RIGHT HON. R. D. MULDOON PRESIDING 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, Amendment No. 1, and shall be read together with and deemed part of the Overseas Investment Regulations 1974* (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the same day as the Overseas Investment Amendment Act 1977.

2. Interpretation—(1) Regulation 2 (1) of the principal regulations is hereby amended by inserting, after the definition of the term “authorised money-market dealer”, the following definition:

“‘Building society’ means a building society within the meaning of the Building Societies Act 1965.”

(2) Regulation 2 (1) of the principal regulations is hereby further amended by omitting the definition of the term “nominee”, and substituting the following definition:

“‘Nominee’, in relation to an overseas person, means—

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

“(b) Any company or building society that—

“(i) Directly or indirectly controls or is interested in (whether beneficially or otherwise) any shares in the capital of the overseas person or a nominee of the overseas person; or

“(ii) Is entitled, directly or indirectly, to any part of the profits of the overseas person or a nominee of the overseas person—

where the acquisition of those shares or the entitlement to that part of those profits was entered into or obtained for the benefit of an overseas person or a nominee of an overseas person; or

“(c) Any person subject to the direction or control, whether direct, indirect, general, or specific, of any company or building society 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; or

“(e) Any overseas person who—

“(i) In any transaction acts jointly or in concert with any other overseas person or any nominee of an overseas person; or

“(ii) Undertakes or participates in any transaction in consequence of any arrangement made between him and any other overseas person or any nominee of an overseas person—

whether or not, in respect of the transaction or the arrangement, the relationship between the first overseas person and the other overseas person or the 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”.

(3) Regulation 2 (1) of the principal regulations is hereby further amended by inserting, after the definition of the term “offeree”, the following definition:

“‘Offeree building society’ means a building society whose shares, or any of them, are proposed to be acquired under a take-over scheme.”.

(4) Regulation 2 (1) of the principal regulations is hereby further amended by omitting the definition of the term “overseas person”, and substituting the following definition:

“‘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, or building society, in which—

“(i) Twenty-five percent or more of any class of shares is held by any overseas person or overseas persons; or

“(ii) The right to exercise or control the exercise of 25 percent or more of the voting power at any general meeting of the company or building society is held by any overseas person or overseas persons; or

“(d) Any nominee of an overseas person, whether or not the nominee is himself otherwise an overseas person.”

(5) Regulation 2 (1) of the principal regulations is hereby further amended by omitting the definition of the term “take-over scheme”, and substituting the following definition:

“‘Take-over scheme’ means any offer relating to the acquisition or disposition of any shares in a company or building society which will have the effect, if accepted, of—

“(a) Conferring on the offeror the beneficial entitlement to, or a beneficial interest in, 25 percent or more of any class of shares issued by the offeree company or offeree building society; or

“(b) Enabling the offeror to exercise or control the exercise of 25 percent or more of the voting power at any general meeting of the offeree company or offeree building society—whether or not the offeror is already beneficially entitled to or has a beneficial interest in 25 percent or more of any such class of shares, or already exercises or controls the exercise of 25 percent or more of such voting power.”

(6) Regulation 2 of the principal regulations is hereby further amended by revoking subclause (2), and substituting the following subclause:

“(2) For the purposes of these regulations, the expressions ‘holding company’ and ‘subsidiary’ shall have the same meanings as they have in section 158 of the Companies Act 1955 but (subject to the meaning of the term ‘overseas person’ in these regulations) for the purposes of interpreting the expressions ‘holding company’ and ‘subsidiary’, that section of that Act shall be read as if in subsection (1) (a) (ii) the expression ‘25 percent or more’ was substituted for the words ‘more than half.’”

(7) Regulation 2 (3) of the principal regulations is hereby amended by inserting in paragraph (c), after the words “offeree company”, the words “or building society”.

3. Borrowing or raising money outside New Zealand—Regulation 3 (1) of the principal regulations is hereby amended by omitting the colon from paragraph (e), and substituting the expression “; or”.

4. Notice to Commission of take-over offers by or to overseas persons—Regulation 7 (1) of the principal regulations is hereby amended—

- (a) By adding to paragraph (h) the words “, or before the offeree building society in general meeting pursuant to sections 91, 95, and 96 of the Building Societies Act 1965, as the case requires”:
- (b) By inserting in paragraph (i), after the words “subsidiary companies”, the words “, or the offeree building society, as the case requires”:
- (c) By inserting in paragraph (k), after the words “offeree company” in both places where they occur, the words “or offeree building society”:
- (d) By omitting paragraph (l), and substituting the following paragraph:

“(1) Where any offeror is beneficially entitled to any shares in any company or building society (other than the offeree company or offeree building society) incorporated in New Zealand, state the name and address of the registered office of that company or building society and particulars of the shares so held.”

5. Overseas persons commencing business in New Zealand—The principal regulations are hereby further amended by revoking regulation 16, and substituting the following regulation:

“16. (1) Except with the consent of the Minister, it shall not be lawful after the commencement of this regulation—

“(a) For any body corporate incorporated outside New Zealand to register as an overseas company under Part XII of the Companies Act 1955; or

“(b) For any overseas person not lawfully carrying on business in New Zealand at the commencement of this regulation to carry on business in New Zealand, either on his own account or in partnership with any other person.

“(2) For the purposes of this regulation, an overseas person shall be deemed not to be carrying on business in New Zealand in any calendar year if that person does not carry on business in New Zealand for any period or periods exceeding 3 months in that year.”

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 the Overseas Investment Regulations 1974, in order to—

- (a) Control the acquisition by overseas persons of interests in building societies;
- (b) Widen the definitions of the terms “nominee”, “overseas person”, and “take-over scheme”; and
- (c) Prohibit any overseas persons from carrying on business in New Zealand without the consent of the Minister of Finance.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 30 March 1978.

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