



THE OVERSEAS INVESTMENT REGULATIONS 1995

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 11th day of December 1995

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Overseas Investment Act 1973, Her 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 1995.

(2) Except as provided in subclause (3) of this regulation, these regulations shall come into force on the 15th day of January 1996.

(3) Regulations 13, 16, and 17 of these regulations shall come into force on the day after the date of the notification of these regulations in the *Gazette*.

PART I

INTERPRETATION

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

“The Act” means the Overseas Investment Act 1973:

“Acquisition” includes obtaining ownership or coming into possession by any means; and “acquire” has a corresponding meaning:

“Associated land”, in relation to any land in which any person owns or controls, or will, as a result of any transaction entered into or to be entered into, own or control, any estate or interest, includes any land—

(a) That is contiguous or adjacent to that land or, where that land forms part of any island specified in Part II of the First Schedule to these regulations, forms part of the same island; and

(b) In which any estate or interest is owned or controlled by that person or any associated person; or

(c) In which any estate or interest will, as a result of any transaction entered into or to be entered into, be owned or controlled by that person or any associated person:

“Associated person” has the meaning given to it by regulation 3 of these regulations:

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

“Document” includes—

(a) Any writing on any material; and

(b) Information recorded or stored by means of a tape-recorder, computer, disk, or other device; and information subsequently derived from information so recorded or stored; and

(c) A book, graph, or drawing; and

(d) A photograph, film, negative, tape, disk, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced:

“Estate or interest” in relation to land, includes a right or interest as purchaser under an agreement to purchase or acquire an estate or interest in land:

“Land” means any land specified in the First Schedule to these regulations:

“Minister” means the Minister of Finance:

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

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

(b) Any company or building society that—

(i) Directly or indirectly controls or is interested in (whether beneficially or otherwise and whether or not the control is legally enforceable) any shares in the capital of that overseas person or a nominee of that overseas person; or

(ii) Is entitled, directly or indirectly, (whether or not the entitlement is legally enforceable) to any part of the profits of the overseas person or a nominee of that 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 the nominee of an overseas person; or

(c) Any person subject to the direction or control, whether direct, indirect, general, or specific, of that overseas person or any nominee of that 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 that overseas person or a nominee of that overseas person or is in any way subject to the direction, control, or influence of that overseas person or a nominee of that overseas person, whether or not, in respect of the transaction, the relationship between that person and that 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 that person 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:

“Overseas investment” means—

(a) Any investment in New Zealand by an overseas person; and includes—

(i) Any proposal for any investment in New Zealand by an overseas person; and

(ii) The ownership or acquisition of, or control over, land or any estate or interest in land in New Zealand, whether direct or indirect, and whether or not the land is specified in the First Schedule to these regulations, if the ownership, acquisition, or control is part of a

business or undertaking carried on, or to be carried on for profit:

(b) The ownership or acquisition of, or control over, land or any estate or interest in land in New Zealand by an overseas person; and includes any proposal for the ownership or acquisition of, or control over, land or any estate or interest in land in New Zealand by an overseas person:

(c) The ownership or acquisition of, or control over, securities or rights or interests in securities of any company or body corporate that owns or controls directly or indirectly any land or any estate or interest in land in New Zealand by an overseas person; and includes any proposal for the ownership or acquisition of, or control over, any such securities or rights or interests in such securities by an overseas person:

“Overseas person” means—

(a) Any person who is not a New Zealand citizen and who is not ordinarily resident in New Zealand:

(b) Any company or body corporate that is incorporated outside New Zealand, or any company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be, that is, for the purposes of the Companies Act 1955 or the Companies Act 1993, a subsidiary of any company or body corporate incorporated outside New Zealand:

(c) Any company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be, or building society, in which—

(i) Twenty-five percent or more of any class of shares is held by an 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 meeting of the company or building society is held by any overseas person or overseas persons:

(d) Any nominee of an overseas person, whether or not the nominee is also an overseas person:

“Person” includes an individual person, a corporation sole, a corporation aggregate, and an association or combination of such persons:

“Property”—

(a) Includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest; but—

(b) In Part II of these regulations, does not include land specified in the First Schedule to these regulations:

“Specified security” means—

(a) An interest or right to participate in any capital, assets, earnings, royalties or other property of any person, not being solely an interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person; and includes—

(i) A share in a company or other body corporate; and

(ii) A unit in a unit trust; and

(iii) An interest in a partnership or joint venture; and

(iv) Membership of an association of persons (whether incorporated or unincorporated) that confers a right to

participate in the control or management of the association, or to vote at a general meeting of the association, or to participate in the assets or property of the association on the liquidation of the association; and

(b) Any other interest or right that confers rights of ownership of the property of any person, or to participate in the property of any person on the liquidation of that person or upon that person ceasing to exist; and

(c) Any other interest that confers rights to exercise control over the property or assets of any person, not being rights conferred solely for the purpose of securing the repayment of money lent to or otherwise owing by any person:

“Transaction” includes—

(a) The sale or transfer of property or securities; and

(b) The issue or allotment of securities; and

(c) The entering into, or the giving of effect to a provision in, a contract or arrangement; and

(d) The arriving at, or the giving of effect to, an understanding:

“Writing” includes words, figures, or symbols displayed electronically if they can be stored in a permanent and legible form by any reader of them.

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

(a) That person is domiciled in New Zealand; or

(b) That person is residing in New Zealand and his or her usual place of abode is, and has been for the immediately preceding period of 12 months, in New Zealand, whether or not that person has been occasionally or temporarily absent from New Zealand during that period.

(3) For the purposes of these regulations, a person is deemed not to be ordinarily resident in New Zealand at any time if, at the time,—

(a) Where the person is a trust,—

(i) Twenty-five percent or more of the trustees are overseas persons; or

(ii) Twenty-five percent or more of the persons having the power to appoint, or to control the appointment of, the trustees, or to amend the provisions of any instrument establishing the trust, are overseas persons; or

(iii) Any overseas person or overseas persons are entitled to a beneficial interest, whether vested or contingent, in 25 percent or more of the trust property:

(b) Where the person is a partnership or joint venture,—

(i) Twenty-five percent or more of the partners or members of the joint venture are overseas persons; or

(ii) Any overseas person or overseas persons hold the right to exercise, or to control the exercise of, 25 percent or more of the voting power at meetings of the partnership or joint venture; or

(iii) Any overseas person or overseas persons are entitled to 25 percent or more of the profits or assets of the joint venture:

(c) Where the person is a unit trust,—

(i) The manager or trustee of that unit trust is an overseas person; or

- (ii) Any overseas person or overseas persons hold 25 percent or more of the total beneficial interests in the money, investments, and other property that are subject to the trusts governing the unit trust:
- (d) Where the person is an unincorporated association or combination of persons not referred to in any of the preceding paragraphs of this subclause,—
 - (i) Twenty-five percent or more of the members of that association or combination of persons are overseas persons; or
 - (ii) Any overseas person or overseas persons hold the right to exercise, or control the exercise of, 25 percent or more of the voting power at meetings of the association or combination of persons; or
 - (iii) Any overseas person or overseas persons are entitled to 25 percent or more of the profits of the association or combination of persons; or
 - (iv) Any overseas person or overseas persons are entitled to 25 percent or more of the assets of the association or combination of persons, either directly or indirectly, or on the liquidation of the association or combination of persons.

3. Meaning of “associated person”—For the purposes of these regulations, one person is associated with another person—

- (a) Where the person is connected to the other person by blood relationship, marriage, or adoption or where the person is a trustee for the other person; and for the purposes of this paragraph—
 - (i) Persons are connected by blood relationship if within the fourth degree of relationship:
 - (ii) Persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other, or if one has a relationship in the nature of marriage with the other or with a person who is connected by blood relationship to the other:
 - (iii) Persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other:
- (b) Where the person is acting with the other person in concert under any contract, arrangement, or understanding in relation to the particular overseas investment:
- (c) If the other person is a company, where the person is a director or officer of the other person, or is related (within the meaning of paragraph (a) of this regulation) to a director or officer of the other person, or is directly or indirectly able to exercise control over the affairs of the other person:
- (d) If the person is a company, where the other person is a director or officer of the person, or is related (within the meaning of paragraph (a) of this regulation) to a director or officer of the person, or is directly or indirectly able to exercise control over the affairs of the person:
- (e) If the person and the other person are companies—
 - (i) Where the person is a holding company or a subsidiary of the other person within the meaning of section 158 of the

Companies Act 1955 or section 5 of the Companies Act 1993, as the case may be; or

(ii) Where the person owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of the other person or the other person owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of the person; or

(iii) Where the person and the other person have the same holding company within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, or a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of each of them;—

and “associated person” has a corresponding meaning.

4. Meaning of “subsidiary”—For the purposes of these regulations (except regulation 3 (e)), the expression “subsidiary” has the same meaning as it has in section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, as the case may be, except that—

- (a) Section 158 (1) (a) (ii) of the Companies Act 1955 shall be read as if for the expression “more than half” there was substituted the expression “25 percent or more”; and
- (b) Section 5 (1) (a) (i) and (ii) of the Companies Act 1993 shall be read as if for the expression “more than one-half” there was substituted the expression “25 percent or more”.

PART II

TRANSACTIONS NOT INVOLVING ACQUISITION OF LAND

5. Transactions not involving acquisition of land that require consent—(1) Subject to regulation 6 of these regulations, an overseas person must obtain the consent of the Minister before giving effect to a transaction that has any of the following effects:

- (a) The acquisition by the overseas person of specified securities or rights or interests in specified securities of another person that will—

(i) Result in the overseas person having a beneficial entitlement to or a beneficial interest in 25 percent or more of the specified securities of the other person; or

(ii) Where the overseas person already has a beneficial entitlement to or a beneficial interest in 25 percent or more of the specified securities of the other person, result in the overseas person having an increased beneficial entitlement to or beneficial interest in specified securities of the other person; or

(iii) Result in the overseas person having the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of the other person; or

(iv) Where the overseas person already has the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of the other person, result in the overseas person having an increased right to exercise or control the exercise of the voting power at a meeting of the other person; or

(v) Result in the overseas person being able to appoint or control the appointment of 25 percent or more of the board of directors (or other persons or body exercising powers of management, however described) of the other person;—
and in any of the cases referred to in subparagraphs (i) to (v) of this paragraph—

(vi) The value of the specified securities or the consideration provided or to be provided by the overseas person exceeds \$10 million; or

(vii) The value of the assets of the issuer of the specified securities, or the value of the assets of the issuer of the specified securities and its subsidiaries, as the case may be, exceeds \$10 million determined, in the case of an issuer of securities to which the Financial Reporting Act 1993 applies, by reference to the financial statements or group financial statements of that issuer required to be prepared under that Act for the most recently completed accounting period:

(b) If the overseas person is not lawfully carrying on business in New Zealand at the commencement of these regulations, the overseas person establishing a business in New Zealand, either on that overseas person's own account or in partnership or association with any other person, for a period exceeding, or for periods that in the aggregate exceed, 3 months in any year in any case where the total expenditure expected to be incurred, prior to the commencement of business, in establishing that business exceeds \$10 million:

(c) The acquisition by the overseas person of property (including goodwill and other intangible assets) in New Zealand used in carrying on business in New Zealand in any case where the total value of the consideration provided or to be provided for the acquisition of the property exceeds \$10 million.

(2) Subject to regulation 6 of these regulations, except where consent has been obtained under subclause (1) of this regulation, a person who is or may be a party to a transaction must obtain the consent of the Minister before giving effect to the transaction if—

(a) Giving effect to the transaction will—

(i) Result in an overseas person having a beneficial entitlement to or a beneficial interest in 25 percent or more of the specified securities of any person; or

(ii) Where an overseas person already has a beneficial entitlement to or a beneficial interest in 25 percent or more of the specified securities of any person, result in the overseas person having an increased beneficial entitlement to or beneficial interest in the specified securities of that person; or

(iii) Result in an overseas person having the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of any person; or

(iv) Where an overseas person already has the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of any person, result in the overseas person having an increased right to exercise or control the exercise of the voting power at a meeting of that person; or

(v) Result in an overseas person being able to appoint or control the appointment of 25 percent or more of the board of

directors (or other persons or body exercising powers of management, however described) of any person; and

- (b) The value of the assets of the other person or, if the other person is a member of a group, the value of the assets of the group, as the case may be, exceeds \$10 million, determined in the case of a person to which the Financial Reporting Act 1993 applies, by reference to the financial statements or group financial statements required to be prepared under that Act for the most recently completed accounting period.

6. Transactions not requiring consent—Nothing in regulation 5 of these regulations applies to the extent that the giving effect to of a transaction has any of the following effects—

- (a) The acquisition by an overseas person of specified securities or rights or interests in specified securities or property—

(i) From another member of the same group, being a group comprising an overseas person and persons that are wholly-owned by that overseas person, as part of a reconstruction or reorganisation of that group; or

(ii) From a person that wholly owns that overseas person; or

- (b) The acquisition by a company incorporated under the Companies Act 1993 of its own shares where—

(i) The acquisition does not alter the proportions in which shares in the company are held by the shareholders or the relative voting rights of the shareholders; or

(ii) The shares are acquired pursuant to section 112 or section 118 of that Act:

- (c) The acquisition by an overseas person of specified securities or property in an amalgamated company pursuant to an amalgamation effected under the Companies Act 1955 or the Companies Act 1993 where the overseas person has the same direct or indirect interest in or rights to the assets of that amalgamated company as that overseas person had in relation to those assets prior to the amalgamation:

- (d) The acquisition by an overseas person of redeemable preference shares that are redeemable only in cash and that do not entitle the holder to exercise voting rights except where the dividend payable is in arrears:

- (e) The transfer of specified securities or rights or interests in specified securities or property from a trustee to an overseas person who is a trustee of the same trust on the appointment of a new trustee or the retirement of a trustee or on the resettlement of a trust if that appointment, retirement, or resettlement does not result in the trust becoming an overseas person:

- (f) The transfer by a trustee, executor, or administrator of the will or of the estate of a deceased person to an overseas person who is a beneficiary of specified securities or rights or interests in specified securities or property under that will or estate or under a trust established by that will or estate:

- (g) The transfer by a trustee of a trust to an overseas person who is a beneficiary of specified securities or rights or interests in specified securities or property under that trust if—

(i) The trust is an overseas person; and

(ii) The acquisition of those specified securities or rights or interests in specified securities or property by the trust has been previously consented to under these regulations; and

(iii) The transfer is not contrary to any conditions of that consent:

- (h) The sale or transfer to an overseas person of specified securities or rights or interests in specified securities or property pursuant to the exercise in good faith of remedies under an instrument that secures the repayment of a loan made by the overseas person in good faith and in the ordinary course of the business of lending money:
- (i) The transfer to an overseas person of specified securities or rights or interests in specified securities or property as security for the repayment of a loan made by the overseas person in good faith and in the ordinary course of the business of the overseas person:
- (j) The retransfer to an overseas person on the discharge of a security of specified securities or rights or interests in specified securities or property transferred solely by way of security:
- (k) The acquisition of securities or rights or interests in securities or property from the investment of funds by an overseas person carrying on in New Zealand the business of life insurance where—
 - (i) The investment of the funds is made for the benefit of policy holders at least 75 percent of whom are New Zealand citizens or persons ordinarily resident in New Zealand; and
 - (ii) If the overseas person carries on any other business, the investment is of funds held in the overseas person's Life Insurance Fund within the meaning of section 15 of the Life Insurance Act 1908:
- (l) The acquisition of securities or rights or interests in securities or property by or on behalf of an overseas person that is the trustee of a superannuation scheme registered under the Superannuation Schemes Act 1989 from the investment of all or part of the assets of the scheme for the benefit of members at least 75 percent of whom are New Zealand citizens or persons ordinarily resident in New Zealand.

7. Notice to Commission—An overseas person who—

- (a) Exercises any remedies under an instrument referred to in regulation 6 (h) of these regulations; or
- (b) Acquires a beneficial interest in property as a result of the default in the performance of an obligation under a loan referred to in regulation 6 (i) of these regulations—

must, within 28 days after doing so, give notice in writing of that fact to the Commission.

PART III

TRANSACTIONS INVOLVING ACQUISITION OF LAND

8. Transactions involving acquisition of land that require consent—(1) Subject to regulation 9 of these regulations, an overseas person must obtain the consent of the Minister and the Minister of Lands before giving effect to a transaction having either of the following effects—

- (a) The acquisition by the overseas person of land or any estate or interest in land; or
 - (b) The acquisition by the overseas person of specified securities or rights or interests in specified securities of any person that owns or controls directly or indirectly any land or any estate or interest in land that will—
 - (i) Result in the other person becoming an overseas person; or
 - (ii) Result in the overseas person having a beneficial entitlement to or a beneficial interest in 25 percent or more of the specified securities of the other person; or
 - (iii) Where the overseas person already has a beneficial entitlement to or a beneficial interest in 25 percent or more of the specified securities of the other person, result in the overseas person having an increased beneficial entitlement to or beneficial interest in specified securities of the other person; or
 - (iv) Result in the overseas person having the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of the other person; or
 - (v) Where the overseas person already has the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of the other person, result in the overseas person having an increased right to exercise or control the exercise of the voting power at a meeting of the other person; or
 - (vi) Result in the overseas person being able to appoint or control the appointment of 25 percent or more of the board of directors (or other persons or body exercising powers of management, however described) of the other person.
- (2) Subject to regulation 9 of these regulations, except where consent has been obtained under subclause (1) of this regulation, a person who is or may be a party to a transaction must obtain the consent of the Minister and the Minister of Lands before giving effect to the transaction if giving effect to the transaction will—
- (a) Result in a person that owns or controls directly or indirectly any land or any estate or interest in land (in this subclause referred to as a “specified person”) becoming an overseas person; or
 - (b) Result in an overseas person having a beneficial entitlement to or a beneficial interest in 25 percent or more of the specified securities of a specified person; or
 - (c) Where an overseas person already has a beneficial entitlement to or a beneficial interest in 25 percent or more of the specified securities of a specified person, result in the overseas person having an increased beneficial entitlement to or beneficial interest in the specified securities of that person; or
 - (d) Result in an overseas person having the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of a specified person; or
 - (e) Where an overseas person already has the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of a specified person, result in the overseas person having an increased right to exercise or control the exercise of the voting power at a meeting of that person; or
 - (f) Result in an overseas person being able to appoint or control the appointment of 25 percent or more of the board of directors (or

other persons or body exercising powers of management, however described) of a specified person.

9. Transactions not requiring consent—Nothing in regulation 8 of these regulations applies to the extent that the giving effect to of a transaction has any of the following effects—

- (a) The alienation to an overseas person of Maori freehold land or any estate or interest in Maori freehold land, being an alienation that has been confirmed by the Maori Land Court under section 153 of Te Ture Whenua Maori Act 1993:
- (b) The lease to an overseas person of any land to which Part I or Part II of the First Schedule to these regulations applies, being a lease—
 - (i) For a term that (including any rights of renewal) does not exceed 3 years; and
 - (ii) Under which the consideration payable by the lessee does not exceed \$10 million:
- (c) The sale or transfer to an overseas person of any leasehold estate or interest in land to which Part I or Part II of the First Schedule to these regulations applies, whether legal or equitable, being a lease—
 - (i) For which a period (including any rights of renewal) of less than 3 years remains unexpired; and
 - (ii) Under which the consideration payable by the lessee does not exceed \$10 million:
- (d) The acquisition by an overseas person of specified securities or rights or interests in specified securities of any person that has a leasehold estate or interest in land to which Part I or Part II of the First Schedule to these regulations applies, whether legal or equitable, being a lease—
 - (i) For a term (including any rights of renewal) which does not exceed 3 years or for which a period (including any rights of renewal) of less than 3 years remains unexpired; and
 - (ii) Under which the consideration payable by the lessee does not exceed \$10 million:
- (e) The sale or transfer to an overseas person of an estate or interest in land to which Part I or Part II of the First Schedule to these regulations applies, other than a freehold or leasehold estate or interest, being an estate or interest—
 - (i) For a term which (including any rights of renewal) does not exceed 3 years; and
 - (ii) Under which the consideration payable for the estate or interest does not exceed \$10 million:
- (f) The acquisition by an overseas person of specified securities or rights or interests in specified securities of any person that has an estate or interest in land to which Part I or Part II of the First Schedule to these regulations applies, other than a freehold or leasehold estate or interest, being an estate or interest—
 - (i) For a term which (including any rights of renewal) does not exceed 3 years; and
 - (ii) Under which the consideration payable for the estate or interest does not exceed \$10 million:
- (g) The acquisition by an overseas person of—
 - (i) Any estate or interest in land; or

- (ii) Specified securities or rights or interests in specified securities of any person that has an estate or interest in land,— being an estate or interest that is solely an easement of right of way:
- (h) The acquisition by an overseas person of specified securities or rights or interests in specified securities or property—
 - (i) From another member of the same group, being a group comprising an overseas person and persons that are wholly-owned by that overseas person, as part of a reconstruction or reorganisation of that group; or
 - (ii) From a person that wholly owns that overseas person; or
- (i) The acquisition by a company incorporated under the Companies Act 1993 of its own shares where—
 - (i) The acquisition does not alter the proportions in which shares in the company are held by the shareholders or the relative voting rights of the shareholders; or
 - (ii) The shares are acquired pursuant to section 112 or section 118 of that Act:
- (j) The acquisition by an overseas person of specified securities or property in an amalgamated company pursuant to an amalgamation effected under the Companies Act 1955 or the Companies Act 1993 where the overseas person has the same direct or indirect interest in or rights to the assets of that amalgamated company as that overseas person had in relation to those assets prior to the amalgamation:
- (k) The acquisition by an overseas person of redeemable preference shares that are redeemable only in cash and that do not entitle the holder to exercise voting rights except where the dividend payable is in arrears:
- (l) The transfer of specified securities or rights or interests in specified securities or property from a trustee to an overseas person who is a trustee of the same trust on the appointment of a new trustee or the retirement of a trustee or on the resettlement of a trust if that appointment, retirement, or resettlement does not result in the trust becoming an overseas person:
- (m) The transfer by a trustee, executor, or administrator of the will or of the estate of a deceased person to an overseas person who is a beneficiary of specified securities or rights or interests in specified securities or property under that will or estate or under a trust established by that will or estate:
- (n) The transfer by a trustee of a trust to an overseas person who is a beneficiary of specified securities or rights or interests in specified securities or property under that trust if—
 - (i) The trust is an overseas person; and
 - (ii) The acquisition of those specified securities or rights or interests in specified securities or property by the trust has been previously consented to under these regulations; and
 - (iii) The transfer is not contrary to any conditions of that consent:
- (o) The sale or transfer to an overseas person of specified securities or rights or interests in specified securities or property pursuant to the exercise in good faith of remedies under an instrument that secures the repayment of a loan made by the overseas person in

good faith and in the ordinary course of the business of lending money:

- (p) The transfer to an overseas person of specified securities or rights or interests in specified securities or property as security for the repayment of a loan made by the overseas person in good faith and in the ordinary course of business of the overseas person:
- (q) The retransfer to an overseas person on the discharge of a security of specified securities or rights or interests in specified securities or property transferred solely by way of security:
- (r) The acquisition of securities or rights or interests in securities or property from the investment of funds by an overseas person carrying on in New Zealand the business of life insurance where—
 - (i) The investment of the funds is made for the benefit of policy holders of whom at least 75 percent are New Zealand citizens or persons ordinarily resident in New Zealand; and
 - (ii) If the overseas person carries on any other business, the investment is of funds held in the overseas person's Life Insurance Fund within the meaning of section 15 of the Life Insurance Act 1908:
- (s) The acquisition of securities or rights or interests in securities or property by or on behalf of an overseas person that is the trustee of a superannuation scheme registered under the Superannuation Schemes Act 1989 from the investment of all or part of the assets of the scheme made for the benefit of members of whom at least 75 percent are New Zealand citizens or persons ordinarily resident in New Zealand.

10. Notice to Commission—An overseas person who—

- (a) Acquires Maori freehold land or any estate or interest in Maori freehold land pursuant to an alienation referred to in regulation 9 (a) of these regulations; or
 - (b) Exercises any remedies under an instrument referred to in regulation 9 (o) of these regulations; or
 - (c) Acquires a beneficial interest in specified securities or rights or interests in specified securities or in property as a result of the default in the performance of an obligation under a loan referred to in regulation 9 (p) of these regulations—
- must, within 28 days after doing so, give notice in writing of that fact to the Commission.

PART IV

MISCELLANEOUS

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

12. Applications for consent—(1) Every application for any consent or exemption under these regulations must be in writing and made or sent to the Secretary of the Commission, at the Reserve Bank of New Zealand, at Wellington.

(2) Every application for any consent or exemption under subclause (1) of this regulation must be accompanied by such information and particulars relating to the application and in such form as the Minister, or

the Minister and the Minister of Lands, or the Commission, as the case may be, may specify.

(3) For the purpose of considering an application for any consent or exemption under subclause (1) of this regulation, the Minister, or the Minister and the Minister of Lands, or the Commission, as the case may be, may, from time to time, by notice in writing, require the applicant for the consent or exemption or any other person to provide to the Minister, or the Minister and the Minister of Lands, or the Commission such information and particulars and in such form as may be specified in the notice.

13. Fees—(1) The Minister or the Commission may fix fees and charges in connection with—

(a) Applications for consents and exemptions made under these regulations and the consideration of such applications:

(b) Monitoring compliance with the conditions of any consent or exemption granted under these regulations:

(c) The provision of administrative and information services.

(2) Fees and charges, or both, may be fixed at—

(a) Different rates for different types of applications or the provision of different types of administrative and information services; and

(b) A rate per day or half-day or for any other period.

(3) The Minister or the Commission, as the case may be, may require the payment of fees and charges fixed under subclause (1) of this regulation—

(a) On the making of an application; or

(b) On the determination of an application; or

(c) On such other occasions as they may direct.

(4) Notice of the fees and charges fixed under subclause (1) of this regulation must be published in the *Gazette*.

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

(a) Be granted in respect of such transactions, instruments, or persons or classes of transactions, instruments, or persons as the Minister, or the Minister and the Minister of Lands, as the case may be, determine, or in respect of any specified transaction, instrument, or person:

(b) Be granted wholly or partly and either unconditionally or subject to such conditions as the Minister, or the Minister and the Minister of Lands, as the case may be, think fit:

(c) Be refused.

(2) Any consent granted under subclause (1) of this regulation may at any time be revoked by the Minister, or the Minister and the Minister of Lands, as the case may be, and any conditions subject to which such consent is granted may from time to time be revoked, varied, or added to by the Minister, or the Minister and the Minister of Lands, as the case may be.

15. Criteria for consent—Section 14A of the Overseas Investment Act 1973 sets out the criteria for the granting of consent to applications under these regulations by overseas persons to undertake overseas investments. Section 14A provides as follows:

“14A. Criteria for consent—(1) Where, pursuant to this Act or regulations made under this Act, the approval, consent, or permission of the Minister or the Minister and the Minister of Lands, as the case may be, is required to an overseas person undertaking an overseas investment, the Minister or the Minister and the Minister of Lands shall grant that approval, consent, or permission only if satisfied that:

- “(a) The overseas person has, or, where the overseas person is not an individual, the individuals exercising control over the overseas person have, business experience and acumen relevant to that overseas investment; and
- “(b) The overseas person has demonstrated financial commitment to the overseas investment; and
- “(c) Every person who will have not less than a 25 percent beneficial interest in the overseas investment is, or, where the overseas person is not an individual, the individuals exercising control over the overseas person are, of good character and no such person is a person of the kind referred to in section 7 (1) of the Immigration Act 1987; and
- “(d) Where the application for such approval, consent, or permission relates to the ownership or acquisition of, or control over,—
 - “(i) Land or any estate or interest in land in New Zealand; or
 - “(ii) Securities or rights or interests in securities of any company or body corporate that owns or controls directly or indirectly any land or any estate or interest in land in New Zealand,—
 the overseas investment would be in the national interest.

“(2) For the purposes of subsection (1) (d) of this section, the Minister and the Minister of Lands shall have regard only to the following matters:

- “(a) Whether the overseas investment will or is likely to result in—
 - “(i) The creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or
 - “(ii) The introduction into New Zealand of new technology or business skills; or
 - “(iii) The development of new export markets or increased export market access for New Zealand exporters; or
 - “(iv) Added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or
 - “(v) The introduction into New Zealand of additional investment for development purposes; or
 - “(vi) Increased processing in New Zealand of New Zealand’s primary products:
- “(b) Where land is currently being used for agricultural purposes,—
 - “(i) Whether experimental or research work will be carried out on the land:
 - “(ii) The proposed use of the land by the applicant:
 - “(iii) If the overseas person is an individual, whether the overseas person intends to farm the land for his or her own use and benefit and is capable of doing so:
- “(c) Whether the overseas person or, if the overseas person is not an individual, any individual who exercises control over the overseas person, intends to reside permanently in New Zealand:
- “(d) Such other matters as may be prescribed:

“(e) Such other matters as the Minister and the Minister of Lands, having regard to the circumstances of the particular overseas investment, think fit.”

16. Exemptions—(1) The Minister may, in his or her discretion, exempt any person or transaction or class or classes of persons or transactions from the whole or any part of the requirements of Part II of these regulations.

(2) The Minister and the Minister of Lands may, in their discretion, exempt any person or transaction or class or classes of persons or transactions from the whole or any part of the requirements of Part III of these regulations.

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

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

(2) The Minister, or the Minister and the Minister of Lands, or the 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 by the notice.

(3) A notice required to be given to any person for the purposes of these regulations may be given by causing it to be—

(a) Delivered to that person, or left at the person's usual or last known residential or business address or at the address specified by the person in any application, notice, or other document received from the person by the Minister, or the Minister and the Minister of Lands, or the Commission, as the case may be; or

(b) Posted to any such address.

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

(5) Every notice under these regulations takes effect when it is published or given, or at such later time as may be specified in the notice.

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

18. Evasion of regulations—No person shall enter into any transaction or execute an instrument for the purpose of or having the effect of, in any way, directly or indirectly, defeating, evading, or circumventing the operation of these regulations.

19. Power to require information and documents for purpose of detecting offences—(1) If the Minister, or the Minister and the Minister of Lands, or the Commission, as the case may be, have reason to suspect that any person has committed an offence against these regulations, either the Minister, or the Minister and the Minister of Lands, 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 provide to the Minister, or the Minister and the Minister of Lands, or the Commission or any other person, any information that, in the opinion of the Minister, or the Minister and the Minister of Lands, or the Commission or other person, may furnish evidence in relation to that offence:
 - (b) To produce to the Minister, or the Minister and the Minister of Lands, or the Commission or any other person, any documents that may be in the possession or under the control of any such person and that, in the opinion of the Minister, or the Minister and the Minister of Lands, or the Commission or other person, may furnish evidence in relation to that offence.
- (2) A notice given under subclause (1) of this regulation may specify the place or places at which any information or documents are to be provided or produced.
- (3) Documents or other information provided or produced under this regulation may be retained or copied by the person to whom they are provided or produced.

20. Power to require information for statistical and monitoring purposes—The Minister, or the Minister and the Minister of Lands, or the Commission, as the case may be, may, for the purpose of—

- (a) Compiling statistical information relating to overseas investment in New Zealand; or
 - (b) Monitoring compliance with the conditions of any approval, consent, permission, or exemption,—
- by notice in writing, require any person to provide to the Minister, or the Minister and the Minister of Lands, or the Commission such information and in such form as is specified in the notice.

21. Revocations and savings—(1) The regulations specified in the Second Schedule to these regulations are hereby revoked.

(2) Notwithstanding 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 was subject to these regulations.

SCHEDULES

Reg. 2

FIRST SCHEDULE

LAND REQUIRING CONSENT TO ACQUISITION BY OVERSEAS PERSONS

PART I

Land over 5 hectares

Any land that, together with any associated land, exceeds 5 hectares in area.

Islands

Any land that is, or that forms part of, an island (other than the North Island or the South Island or an island specified in Part II of this Schedule).

Any land that, together with any associated land, exceeds 0.4 hectares in area and that forms part of an island specified in Part II of this Schedule.

Any land that is, or that forms part of, an island of the Chatham Islands.

Foreshore, lakes, and reserves

Any land that, together with any associated land, exceeds 0.4 hectares in area and that includes or adjoins—

- (a) The foreshore; or
- (b) Any lake the bed of which exceeds 8 hectares in area; or
- (c) Any land that exceeds 0.4 hectares in area and—
 - (i) Is held for conservation purposes under the Conservation Act 1987; or
 - (ii) Is provided as a reserve, a public park, for recreation purposes, or as a private open space, or is proposed for any such purpose, or is subject to a heritage order, under any operative regional plan or proposed or operative district plan under the Resource Management Act 1991; or
 - (iii) Is the subject of a notice of requirement for a heritage order by a heritage protection authority under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993; or
 - (iv) Is an historic place, an historic area, wahi tapu, or a wahi tapu area entered in the register established under the Historic Places Act 1993 or in respect of which an application or proposal for entry in the register has been made under that Act; or
 - (v) Forms part of an historic place entered in that register or on which is situated any building, object, or chattel that is entered in that register or in respect of which an application or proposal for entry in that register has been made under that Act.

FIRST SCHEDULE—*continued*LAND REQUIRING CONSENT TO ACQUISITION BY OVERSEAS PERSONS—
continued

PART II

Land over 0.4 hectares on certain islands

Arapawa Island
Best Island
Great Barrier Island
Great Mercury Island
Jackett Island
Kawau Island
Matakana Island
Mayor Island
Motiti Island
Motuhoa Island
Rakino Island
Rangiwaia Island
Slipper Island
Stewart Island
Waiheke Island
Whanganui Island

PART III

Other land

Any land, other than land specified in Part I or Part II of this Schedule, if the consideration in the transaction in respect of ownership or acquisition of, or control over, the land or any estate or interest in the land exceeds \$10 million.

Any land, other than land specified in Part I or Part II of this Schedule, that is, or any estate or interest in which is, owned or controlled directly or indirectly by a company or body corporate if the consideration in respect of the ownership or acquisition of, or control over, securities or rights or interests in securities of the company or body corporate, insofar as it relates to land or any estate or interest in land, exceeds \$10 million.

Reg. 21

SECOND SCHEDULE
REGULATIONS REVOKED

Title	Statutory Regulations Serial Number
The Overseas Investment Regulations 1985 ...	1985/256
The Overseas Investment Regulations 1985, Amendment No. 2	1989/226
The Overseas Investment Regulations 1985, Amendment No. 3	1991/219

BOB MACFARLANE,
Acting for 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 are made under the Overseas Investment Act 1973 (as amended by the Overseas Investment Amendment Act 1995) and replace the Overseas Investment Regulations 1985. Except for regulations 13, 16, and 17, the regulations come into force on 15 January 1996. Regulations 13, 16, and 17 which relate to fees, exemptions, and notices, respectively, come into force on the day after the date of the notification of the regulations in the *Gazette*.

The effect of the amendments to the Overseas Investment Act 1973 by the Overseas Investment Amendment Act 1995 together with the repeal by it of the Land Settlement Promotion and Land Acquisition Act 1952 is that overseas investment, including overseas ownership of land, is subject to control by regulations under the Overseas Investment Act 1973.

Transactions to which the Overseas Investment Act 1973 and the Overseas Investment Regulations 1985 applied before the commencement of the regulations will continue to be subject to the Act and those regulations as then in force.

Transactions to which the Land Settlement Promotion and Land Acquisition Act 1952 applied before the commencement of the regulations will continue to be subject to that Act as in force prior to its repeal.

The scheme of the regulations is that Part I relates to matters of interpretation, Part II relates to transactions, other than transactions involving land, that require the consent of the Minister of Finance, Part III relates to land transactions that require the consent of the Minister of Finance and the Minister of Lands, and Part IV relates to the procedure for obtaining consents and exemptions, the granting of and criteria for consents, the fixing and payment of fees, the obtaining of information, and other general matters.

Regulation 1 relates to the title and commencement of the regulations.

Regulation 2 defines terms used in the regulations. The terms "associated land", "Commission", "land", "nominee", "overseas investment", and "overseas person" have the same meanings as they have in the principal Act. The terms "acquisition", "specified security", and "transaction" are defined specifically for the purposes of the regulations.

Regulation 3 defines the term "associated person" in the same terms as in the principal Act.

Regulation 4 defines the term "subsidiary". In the case of companies incorporated under the Companies Act 1955, the term has the same meaning as in section 158 of the Act except that a company will be a subsidiary if another company holds, instead of more than 50 percent, 25 percent or more of its ordinary shares. In the case of companies incorporated under the Companies Act 1993, the term has the same meaning as in section 5 of the Act except that a company will be a subsidiary if another company has the right to control 25 percent or more of the voting rights, or holds 25 percent or more of its ordinary shares, or has the right to 25 percent or more of its dividends instead, in each case, of more than 50 percent.

The definition adopts the same approach as in the Overseas Investment Regulations 1985.

Regulation 5 relates to transactions not involving the acquisition of land.

Subclause (1) requires an overseas person to obtain the consent of the Minister of Finance before giving effect to a transaction that would have any of the results specified.

In essence, these are:

- (a) The acquisition by the overseas person of a beneficial entitlement or interest in 25 percent or more of the securities of another person or voting rights in 25 percent or more of the securities of another person or the right to appoint 25 percent or more of the board of another person in any case where—
 - (i) The value of the securities or the consideration for the acquisition exceeds \$10 million; or
 - (ii) The value of the assets of the issuer of the securities, or in the case of a group, of the assets of the group, exceeds \$10 million;
- (b) The establishing by the overseas person, for a period exceeding 3 months, of a business where the expenditure involved exceeds \$10 million;
- (c) The acquisition by the overseas person of property used in carrying on business where the value of the consideration exceeds \$10 million.

Subclause (2) provides that, except in a case where consent has been given under *subclause (1)*, a person who is or may be a party to a transaction must obtain the consent of the Minister of Finance before giving effect to the transaction if—

- (a) The transaction will result in an overseas person having a beneficial entitlement or interest in 25 percent or more of the securities of another person or voting rights in 25 percent or more of the securities of another person or the right to appoint 25 percent or more of the board of another person; and
- (b) The value of the assets of the other person, or in the case of a group, of the assets of the group, exceeds \$10 million.

Regulation 6 contains a list of exceptions to *regulation 5* where consent is not required.

Regulation 7 requires an overseas person who acquires property in 2 cases where consent is not required to notify the Overseas Investment Commission of the acquisition. Notice must be given where the acquisition results from the exercise of remedies under an instrument securing the repayment of a loan (*regulation 6 (h)*) or results from the transfer of a beneficial interest in property previously transferred as security for the repayment of a loan in the event of a default by the borrower (*regulation 6 (i)*).

Regulation 8 relates to transactions involving the acquisition of land.

Subclause (1) requires an overseas person to obtain the consent of the Minister of Finance and the Minister of Lands before giving effect to a transaction that would have any of the results specified.

In essence, these are:

- (a) The acquisition by the overseas person of land or any estate or interest in land;
- (b) The acquisition by the overseas person of securities of another person that owns land or any estate or interest in land where—
 - (i) The other person would, as a result of the acquisition of the securities, become an overseas person; or
 - (ii) The overseas person would acquire a beneficial entitlement or interest in 25 percent or more of the securities of the other person or voting rights in 25 percent or more of the securities of the other person or the right to appoint 25 percent or more of the board of the other person.

Subclause (2) provides that, except in a case where consent has been given under *subclause (1)*, a person who is a party to a transaction must obtain the consent of the Minister of Finance and the Minister of Lands before giving effect to the transaction if the transaction will—

- (a) Result in a person that owns land becoming an overseas person; or
- (b) Result in an overseas person having a beneficial entitlement or interest in 25 percent or more of the securities of another person or voting rights in 25 percent or more of the securities of another person or the right to appoint 25 percent or more of the board of another person in any case where that other person owns land.

Regulation 9 contains a list of exceptions to *regulation 8* where consent is not required.

Regulation 10 is similar to *regulation 7* and requires notice to be given to the Commission where the overseas person acquires Maori freehold land pursuant to an alienation (*regulation 9 (a)*) or acquires property in the exercise of remedies under an instrument that secures the repayment of a loan (*regulation 9 (o)*) or acquires a beneficial interest in property previously transferred as security for the repayment of a loan in the event of a default by the borrower (*regulation 9 (p)*).

Regulation 11, which is the same as regulation 6 of the existing regulations, relates to the position of Secretary to the Overseas Investment Commission.

Regulation 12 relates to the making of applications for consents and exemptions under the regulations.

Regulation 13 relates to the fixing and payment of fees.

Regulation 14, which is similar to regulation 20 of the present regulations, relates to the granting or refusal of consent. Consents may be granted in respect of transactions, instruments, or persons, classes of transactions, instruments, or persons, or specific transactions, instruments, or persons and may be conditional or unconditional.

Regulation 15 restates section 14A of the principal Act. That section prescribes the criteria for the granting of consent to applications under the regulations.

Regulation 16, which is similar to regulation 21 of the existing regulations, confers power on the Minister of Finance to grant exemptions from Part II of the regulations and on the Minister of Finance and the Minister of Lands to grant exemptions from Part III of the regulations.

Regulation 17, which is similar to regulation 22 of the existing regulations, relates to the giving of notices of the exercise or powers and of directions or determinations under the regulations.

Regulation 18, which is similar to regulation 19 of the existing regulations, prohibits evasion of the regulations.

Regulation 19, which is similar to regulation 23 of the existing regulations, confers power to obtain information relating to offences against the regulations.

Regulation 20 enables information to be obtained for statistical purposes and for the purpose of monitoring compliance with the conditions of any consent or exemption granted under the regulations.

Regulation 21 revokes the Overseas Investment Regulations 1985 and provides that consents and exemptions under those regulations continue in force as if they had been granted under the new regulations.

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

Date of notification in *Gazette*: 14 December 1995.

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