



THE SECURITIES ACT (OVERSEAS BANKS REPRESENTATIVE OFFICES) EXEMPTION NOTICE 1996

PURSUANT to the Securities Act 1978, the Securities Commission gives the following notice.

NOTICE

1. Title and commencement—(1) This notice may be cited as the Securities Act (Overseas Banks Representative Offices) Exemption Notice 1996.

(2) This notice shall come into force on the day after the date of its notification in the *Gazette*.

2. Interpretation—(1) In this notice, unless the context otherwise requires,—

“The Act” means the Securities Act 1978:

“Annual report” in relation to a represented bank, means a document of the kind described in the second column of the Schedule to this notice opposite the name of the bank:

“Interim report” in relation to a represented bank, means a document of the kind described in the third column of the Schedule to this notice opposite the name of the bank:

“The Regulations” means the Securities Regulations 1983:

“Representative office” has the same meaning as in section 65 (8) of the Reserve Bank of New Zealand Act 1989:

“Represented bank” means a body (whether incorporated or not) that is—

(a) Formed or registered in a country other than New Zealand under a name or title that includes the words “bank”, “banker”, or “banking”, or any of those words as part of any other word, that is authorised for the time being by the Reserve Bank of New Zealand pursuant to section 65 (1) (c) of the Reserve Bank of New Zealand Act 1989 to use those words, or any of those words as part of any other word, in connection with the establishment or operation of a representative office in New Zealand; and

(b) Specified in the Schedule to this notice:

“Second Schedule” means the Second Schedule to the Regulations.

(2) Any term or expression that is not defined in this notice, but that is defined in the Act or the Regulations, has the meaning given to it by the Act or the Regulations.

3. Represented banks exempt from sections 33 (2) and 45 to 50 of the Securities Act 1978 in respect of offers of debt securities—

(1) Subject to subclause (2) of this clause, every represented bank and every person acting on its behalf are exempted from compliance with the provisions of sections 33 (2) and 45 to 50 of the Act in respect of any offer of debt securities of which the represented bank is the issuer.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that every registered prospectus relating to the debt securities contains prominent statements—

- (a) That investors should satisfy themselves as to the tax implications of investing in debt securities issued by the represented bank; and
- (b) That investing in debt securities denominated in a currency other than New Zealand dollars carries with it a currency risk; and
- (c) That the contract in respect of the debt securities may not be enforceable in New Zealand courts.

4. Represented banks exempt from sections 37A (1) (a) to (d) and 38 (a) and (b) of the Securities Act 1978 and regulation 10 of the Securities Regulations 1983 in respect of offers of debt securities—

(1) Subject to subclauses (2) and (3) of this clause, every represented bank and every person acting on its behalf are exempted from compliance with the provisions of sections 37A (1) (a) to (d) and 38 (a) and (b) of the Act and regulation 10 of the Regulations in respect of any offer of debt securities of which the represented bank is the issuer.

(2) The exemption granted by subclause (1) of this clause is subject, in the case of any offer of debt securities made by the represented bank to a person who does not already hold, or who has not in the 12 months preceding the making of the offer held, debt securities issued by the represented bank, to the condition that before allotting any such securities the represented bank has provided that person with a copy of the registered prospectus relating to the offer of the securities.

(3) The exemption granted by subclause (1) of this clause is subject to the following conditions:

- (a) That copies of the registered prospectus relating to the debt securities are on display and available to members of the public during normal business hours at each representative office in New Zealand of the represented bank; and
- (b) That at the date of the offer and at the date of allotment of the securities, the registered prospectus relating to the debt securities is not known by the represented bank, or any director of the represented bank, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the registered prospectus became so misleading as a result of circumstances occurring after the date of the registered prospectus).

5. Represented banks exempt from section 37A (1) (e) and (f) of the Securities Act 1978 in respect of allotments of debt securities—

(1) Subject to subclause (2) of this clause, every represented bank and every

person acting on its behalf are exempted from compliance with the provisions of section 37A (1) (e) of the Act in respect of the allotment of debt securities of which the represented bank is the issuer.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that no allotment of any such debt securities is made if the date of allotment would be more than—

- (a) Nine months after the date of the most recent audited balance sheet contained in the annual report of the bank that is attached to, or that accompanies, the registered prospectus; or
- (b) Fifteen months after the date of the balance sheet referred to in paragraph (a) of this subclause in any case where the registered prospectus relating to the debt securities has attached thereto, or is accompanied by, in addition to the annual report referred to in that paragraph, the interim report of the bank, which report contains interim financial statements of the bank drawn up as at a stated date that is not more than 9 months after the date of that balance sheet.

(3) Every represented bank and every person acting on its behalf are exempted from compliance with the provisions of section 37A (1) (f) of the Act in respect of any allotment of debt securities of which the represented bank is the issuer.

6. Represented banks exempt from sections 51 to 54 of the Securities Act 1978 in respect of debt securities—Every represented bank is exempted from compliance with the provisions of sections 51 to 54 of the Act in respect of any debt securities of which the represented bank is the issuer.

7. Represented banks exempt from regulation 14 (1) of the Securities Regulations 1983 in respect of offers of debt securities—Every represented bank and every person acting on its behalf are exempted from compliance with the provisions of regulation 14 (1) of the Regulations in respect of any offer of debt securities of which the represented bank is the issuer.

8. Represented banks exempt from compliance with certain provisions of the Second Schedule to the Securities Regulations 1983—(1) Subject to subclause (2) of this clause, every represented bank and every person acting on its behalf are exempted from compliance with the provisions of clauses 1 (2), (3), and (4) and 14 of the Second Schedule in respect of any offer of debt securities of which the represented bank is the issuer.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that the registered prospectus relating to the debt securities contains a statement in the following terms:

“This prospectus invites the public to subscribe for debt securities (within the meaning of the Securities Act 1978) that are offered to the public by [*Name of bank*] from time to time. The terms and conditions of the securities are those agreed between the subscriber and the bank from time to time and include any terms and conditions contained in this prospectus and any terms and conditions implied by the law that applies to the offer and allotment of the securities.”

(3) Subject to subclause (4) of this clause, every represented bank and every person acting on its behalf are exempted from compliance with the provisions of clause 5 (1) of the Second Schedule in respect of any offer of debt securities of which the represented bank is the issuer.

(4) The exemption granted by subclause (3) of this clause is subject to the condition that the registered prospectus relating to the debt securities states, in relation to every director of the bank,—

- (a) The name of the director; and
- (b) The city, town, or district in which the principal place of residence of the director is situated; and
- (c) An address to which any document or communication relating to the offer of the debt securities or the securities themselves may be sent to the director.

(5) Subject to subclause (6) of this clause, every represented bank and every person acting on its behalf are exempted from compliance with the provisions of clauses 8 and 9 of the Second Schedule in respect of any offer of debt securities of which the represented bank is the issuer.

(6) The exemption granted by subclause (5) of this clause is subject to the following conditions:

- (a) That a credit rating in respect of the long-term senior unsecured obligations of the represented bank has been given and is current at the time that offers of the debt securities are made; and
- (b) That the registered prospectus relating to the debt securities states:
 - (i) The name of the person by whom the rating has been given; and
 - (ii) The rating and any qualifications to it; and
 - (iii) Any changes made to any rating given in respect of the long-term senior unsecured obligations of the represented bank during the 2 years preceding the specified date and the date on which any such changes occurred.

(7) Every represented bank and every person acting on its behalf are exempted from compliance with the provisions of clause 11 of the Second Schedule in respect of any offer of debt securities of which the represented bank is the issuer.

9. Represented banks exempt from certain provisions of the Second Schedule to the Securities Regulations 1983 relating to disclosure of financial information—(1) Subject to subclause (2) of this clause, every represented bank and every person acting on its behalf are exempted from compliance with the provisions of clauses 7, 15 to 32, and 36 of the Second Schedule in respect of any offer of debt securities of which the represented bank is the issuer.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that the registered prospectus relating to the debt securities—

- (a) Has attached thereto, or is accompanied by, a copy of—
 - (i) The most recent annual report of the represented bank; and
 - (ii) If the date of allotment of any such debt securities would be more than 9 months after the date of the balance sheet contained in that report, the interim report of the bank for the next half-year; and

- (b) Contains a prominent statement to the effect that the financial reporting requirements applying in New Zealand and those applying to the represented bank may be different and the financial statements of the represented bank contained in the annual report or any interim report of the bank may not be compatible in all respects with financial statements prepared in accordance with the Securities Act 1978 and the Financial Reporting Act 1993.

SCHEDULE

Represented bank	Annual report	Interim report
Lloyds Bank Plc	The annual report prepared and signed pursuant to Part VII of the Companies Act 1985 of the United Kingdom together with any other report to the shareholders of the bank that is referred to in the annual report.	The half-yearly report published pursuant to the obligations of the bank under the Listing Rules of the London Stock Exchange.

Dated at Wellington this 29th day of March 1996.

The Common Seal of the Securities Commission was hereunto affixed in the presence of:

[L.S.]

E. H. ABERNETHY,
Chairman.

EXPLANATORY NOTE

This note is not part of the notice, but is intended to indicate its general effect.

This notice comes into force on the day after the date of its notification in the *Gazette*.

The notice applies to overseas banks that have representative offices in New Zealand and that are named in the Schedule to the notice. As at the date of the notice, Lloyds Bank Plc is the only represented bank named in the Schedule. Other banks may subsequently be added to the Schedule.

The notice exempts such banks, subject to certain conditions, from compliance with provisions of the Securities Act 1978 and the Securities Regulations 1983 in the case of offers and allotments of debt securities.

Clause 1 relates to the title and commencement of the notice.

Clause 2 defines terms used in the notice.

Clause 3 exempts represented banks from sections 33 (2) and 45 to 50 of the Securities Act 1978.

Section 33 (2) prohibits the making of offers of debt securities to the public unless the issuer has appointed a trustee and entered into a trust deed in respect of the securities. Sections 45 to 50 are related provisions.

Clause 4 exempts represented banks from compliance with sections 37A (1) (a) to (d) and 38 (a) and (b) of the Act and regulation 10 of the Securities Regulations 1983.

The broad effect of this exemption is that it will not be necessary for subscribers to have received a registered prospectus before subscribing for the securities but copies of the registered prospectus will have to be available during business hours at the representative office of the bank.

In the case of persons who are not existing holders of debt securities or who have not been holders of such securities within the preceding 12 months, the bank is required to provide such persons with a copy of the registered prospectus before allotting the securities.

Clause 5 exempts represented banks from section 37A (1) (e) and (f) of the Act.

The effect of the exemption from section 37A (1) (e) is to extend the date by which debt securities issued by represented banks may be allotted to 15 months after the date of the bank's latest audited balance sheet.

Section 37A (1) (f) prohibits the allotment of securities in excess of the amount specified in the registered prospectus as the maximum amount that will be allotted.

Clause 6 exempts represented banks from sections 51 to 54 of the Act.

Section 51 requires issuers to maintain a register of securities.

Section 52 relates to the inspection of such registers.

Section 53 requires issuers to maintain accounting records and provides for the auditing of those records.

Section 54 relates to the issue of certificates for securities.

Clause 7 exempts represented banks from regulation 14 (1) of the Securities Regulations 1983.

Regulation 14 (1) requires an advertisement that refers to an offer of debt securities to state either that the securities are unsecured or the nature and ranking of any security.

Clause 8 exempts represented banks from a number of provisions of the Second Schedule to the Securities Regulations 1983. That Schedule specifies the information that must be contained in a registered prospectus for debt securities.

Clause 9 exempts represented banks from clauses 7, 15 to 32, and 36 of the Second Schedule to the Securities Regulations 1983. Those clauses relate to the financial information that must be included in a registered prospectus for debt securities. The registered prospectus must be accompanied by the bank's most recent annual report and, if the date of allotment of the securities would be more than 9 months after the date of the balance sheet of the bank referred to in that report, by the bank's interim report.

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

Date of notification in *Gazette*: 4 April 1996.

This notice is administered in the Securities Commission.