



THE FINANCE COMPANIES (INVESTMENT) REGULATIONS 1983

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 21st day of February 1983

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to sections 34c and 50 of the Reserve Bank of New Zealand Act 1964, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Finance Companies (Investment) Regulations 1983.

(2) These regulations shall come into force on the 1st day of April 1983.

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

“Borrowings” has the meaning given to it by regulation 4 of these regulations:

“Credit sale agreement” means an agreement for the sale of goods under which the whole or part of the purchase price is payable by instalments, other than such an agreement that provides for the instalments to be spread over a period of 6 months or less:

“Finance company” has the meaning given to it by regulation 3 of these regulations:

“Goods” includes all chattels personal, other than money or things in action:

“Government stock”—

(a) Means New Zealand Government stock issued and registered in New Zealand; and

(b) Includes—

(i) Registered Treasury Bills; and

(ii) Government of Western Samoa Stock issued and registered in New Zealand after the 1st day of August 1976:

“Hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, whether on the performance of any act by the parties to the agreement or any of them or in any other circumstances; and includes any agreement for the bailment of goods, with or without expressly giving to the bailee an option to buy the goods, under which instalments are payable by the bailee during a specified or ascertainable period at the end of which the bailee may continue the bailment without any payment or subject to the payment of a nominal rent only:

“Holding company” has the meaning given to it by section 158 of the Companies Act 1955:

“Investment” has the meaning given to it by regulation 5 of these regulations:

“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:

“Person” includes a corporation sole and also a body of persons whether incorporated or not:

“Reserve Bank”, or “the Bank”, means the Reserve Bank of New Zealand constituted under the Reserve Bank of New Zealand Act 1964:

“Subsidiary” has the meaning given to it by section 158 of the Companies Act 1955:

“Trade credit” means credit given, or, as the case may require, received, in the course of business in relation to the sale or purchase of goods or the provision of services.

3. "Finance company" defined—(1) In these regulations, unless the context otherwise requires, the term "finance company" means any person, company, society, or association (whether incorporated or not) which, in the course of his or its business, borrows any money (or has borrowed any money which for the time being is not repaid) and invests any money (or has invested any money which for the time being is not repaid); but does not include—

- (a) The Reserve Bank; or
- (b) A trading bank for the time being named in the First Schedule to the Reserve Bank of New Zealand Act 1964; or
- (c) A trustee savings bank constituted under the Trustee Savings Banks Act 1948; or
- (d) A private savings bank within the meaning of the Private Savings Banks Act 1964; or
- (e) A building society within the meaning of the Building Societies Act 1965.

(2) Notwithstanding anything in subclause (1) of this regulation, a person, company, society, or association shall not at the end of any month be a finance company for the purposes of these regulations if—

- (a) His or its investments do not then exceed \$100,000; or
- (b) His or its investments do not then exceed \$2 million and those investments then represent less than 25 percent of his or its total assets; or
- (c) In the case of a natural person, his investments do not then exceed \$2 million.

(3) If with respect to any person, company, society, or association any question arises as to whether he or it is properly classifiable as a finance company, the question shall be determined by the Minister of Finance, whose decision shall be final.

4. "Borrowings" defined—(1) In these regulations, unless the context otherwise requires, the term "borrowings", in relation to a finance company, means the total amount borrowed by the finance company, whether within or outside New Zealand, and not for the time being repaid.

(2) For the purposes of subclause (1) of this regulation, where a cheque or other order on its bank is given by the finance company in repayment of any amount borrowed by it, that amount shall be deemed not to be repaid until it has been debited to the finance company's account at that bank.

(3) In subclause (1) of this regulation, the expression "the total amount borrowed by the finance company" includes—

- (a) All amounts borrowed before the date of the commencement of these regulations; or
- (b) If the finance company becomes or has become subject to these regulations after the commencement of these regulations, all amounts borrowed before the date on which it is or was first required, pursuant to regulation 6 of these regulations, to hold Government stock—

as well as all amounts borrowed on or after any such date as aforesaid.

- (4) Any reference in these regulations to the borrowing of money—
 - (a) Includes—

- (i) A reference to the receiving of credit, and to an agreement to receive credit; and

- (ii) The acceptance of money on deposit or by way of loan or in return for the issue of convertible or redeemable notes; but
- (b) Does not include the receiving of, or an agreement to receive, trade credit, whether in the course of a bona fide mercantile current account or otherwise, for a total period not exceeding 6 months in respect of any one item of goods or services, being a period commencing from the date on which possession of that item of goods is given and taken or, as the case may be, from the date of completion of that item of services.
- (5) Notwithstanding anything in subclause (4) of this regulation, in any case where trade credit is or has been received, or agreed to be received, for a period exceeding 6 months in respect of any item as aforesaid, the Bank may in its discretion, on application, and subject to such conditions and limitations as it thinks fit, determine that the receiving of that credit shall not be treated as the borrowing of money for the purposes of these regulations, and every such determination shall have effect accordingly.
- (6) Any reference in these regulations to the borrowing of money includes a reference to 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.
- (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 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, but without limiting the provisions of these regulations, a finance company shall be deemed to borrow money if it sells any land or interest in land, whether within or outside 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 thereof (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 thereof; and in any such case the amount of the consideration for such sale by the finance company of the land or interest in land shall be deemed to be an amount borrowed by it.
- (9) For the purposes of these regulations, 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,—
- (a) Each such branch shall be deemed to be a separate person; and

(b) Any money made available to any such branch by the body corporate shall be deemed to be borrowed by that branch.

(10) In these regulations, the term “borrows” shall be construed to include the doing of any act or thing which by virtue of any of the foregoing provisions of this regulation amounts to borrowing; but nothing in this subclause or in the foregoing provisions of this regulation shall be construed to limit the generality of the term “borrows” or of any derivative of that term or of any references in these regulations to the borrowing of money.

5. “Investment” defined—(1) In these regulations, unless the context otherwise requires, and except as provided in subclause (4) of this regulation, the term “investment” means—

- (a) The lending of money, with or without security, and irrespective of the period of the loan; or the giving of credit, with or without security, or an agreement to give such credit; or
- (b) The financing or discounting of hire purchase agreements or credit sale agreements; or
- (c) The paying of sums as consideration for the assignment, to the payer, of debts or other obligations owing or due to the person to whom the consideration is paid; or
- (d) The purchasing of goods for the purpose of entering into agreements for the bailment of those goods under which the bailee will have the right to their exclusive possession for any period exceeding 3 months—

and “invests” and “investing” have corresponding meanings.

(2) Without limiting the generality of subclause (1) of this regulation, the term “investment” includes, for the purposes of these regulations, any such investment as aforesaid—

- (a) Made before the date of the commencement of these regulations and not for the time being repaid; or
- (b) In the case of a finance company that becomes or has become subject to these regulations after the commencement of these regulations, made before the date on which it is or was first required, pursuant to regulation 6 of these regulations, to hold Government stock, and not for the time being repaid—

as well as investments made on or after any such date as aforesaid.

(3) For the purposes of paragraph (b) of subclause (1) of this regulation, where by virtue of 2 or more agreements, none of which by itself constitutes a hire purchase agreement or a credit sale agreement, there is a transaction which is in substance or effect a hire purchase agreement or a credit sale agreement, as defined in regulation 2 (1) of these regulations, the transaction shall be treated as a hire purchase agreement or credit sale agreement.

(4) For the purposes of these regulations, but subject to subclause (3) of this regulation, the term “investment” does not include—

- (a) The giving of, or an agreement to give, trade credit, whether in the course of a bona fide mercantile current account or otherwise, for a total period not exceeding 6 months in respect of any one item of goods or services, being a period commencing from the date on which possession of that item of goods is given and taken or, as the case may be, from the date of completion of that item of services; or

- (b) The depositing of money with—
 - (i) A trading bank for the time being named in the First Schedule to the Reserve Bank of New Zealand Act 1964; or
 - (ii) A trustee savings bank constituted under the Trustee Savings Banks Act 1948; or
 - (iii) A private savings bank within the meaning of the Private Savings Banks Act 1964; or
 - (iv) A building society within the meaning of the Building Societies Act 1965; or
- (c) Any investment in Government stock; or
- (d) Any investment in securities issued by any local authority in accordance with the Local Authorities Loans Act 1956; or
- (e) The depositing of money with any person for the time being authorised by the Reserve Bank to receive money on deposit as a short-term money market dealer; or
- (f) The making of loans to any mining company to which section 216 of the Income Tax Act 1976 applies; or
- (g) The making of loans by a finance company to employees of the finance company or to employees of any holding company or subsidiary of the finance company, being loans for the sole use and benefit of such employees; or
- (h) The making of loans to, or the depositing of money with, a finance company; or
- (i) The making of loans by a finance company to, or the depositing of money by a finance company with, any holding company or subsidiary of the finance company.

(5) Notwithstanding anything in subclause (4) (a) of this regulation, in any case where trade credit is or has been given, or agreed to be given, for a period exceeding 6 months in respect of any item as aforesaid, the Bank may in its discretion, on application, and subject to such conditions and limitations as it thinks fit, determine that the giving of that credit shall not be treated as an investment for the purposes of these regulations, and every such determination shall have effect accordingly.

6. Finance companies to hold Government stock—(1) Every finance company shall at all times during every month in each year hold and have registered in its name an amount of Government stock at least equal in nominal value to 18 percent of its investments as at the end of the immediately preceding month.

(2) In calculating any holding in Government stock for the purposes of this regulation, no Government stock shall be taken into account unless the finance company is the beneficial owner thereof.

(3) For the purposes of this regulation, a finance company that makes any payment to the Registrar of Stock by way of advance subscription for any future issue of Government stock, or by way of instalment of subscription for any then current issue of Government stock, shall be deemed to hold and have registered in its name Government stock to the extent of such payment.

(4) For the purposes of this regulation, a finance company shall be deemed to hold Government stock on the first day of any month or other period, or on any specified date, and to have that Government stock registered in its name on that first day or on that specified date if—

- (a) That Government stock is held by it and is registered in its name not later than the 10th day after the said first day or specified date, as the case may require; and
- (b) That Government stock is additional to the amount of Government stock that it was required by these regulations to hold and have registered in its name on the first day of the immediately preceding month or other period or on the immediately preceding specified date.

7. Finance companies to register with Reserve Bank—

Every finance company shall—

- (a) Within 1 month after the commencement of these regulations; or
- (b) In the case of a person, company, society, or association that at any time after the commencement of these regulations becomes a finance company as defined in these regulations, within 1 month after so becoming a finance company—

send to the Head Office of the Reserve Bank at Wellington a notice in writing stating that it is subject to these regulations and specifying the name and address of the finance company.

8. Returns of investments—(1) Every finance company shall, within 10 days after the end of every month, send to the Head Office of the Reserve Bank at Wellington a return specifying the amount of the finance company's investments as at the end of that month, and containing such further information and particulars relating to matters to which these regulations apply as may be required by the Bank.

(2) Every such return shall be in a form to be provided by the Bank.

(3) No finance company shall be required under this regulation to supply any information with respect to the identity or affairs of any particular person from whom the finance company has borrowed any money or with or in respect of whom the finance company has made any investment.

9. Delegation of Minister's powers—(1) The Minister may from time to time, by writing under his hand, delegate to the Governor of the Reserve Bank or any other person any of his powers under these regulations, including this power of delegation.

(2) Any delegation under this regulation may be made to a specified person or to persons of a specified class, or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a specified class.

(3) Any such delegation may be made subject to such conditions and restrictions as the Minister thinks fit, and may be made either generally or in relation to any particular matter or class of matters.

(4) Subject to any general or special directions given or conditions or restrictions imposed by the Minister, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by these regulations and not by delegation.

(5) Every person purporting to act pursuant to any delegation under this regulation shall be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.

(6) The delegation of any power by the Minister shall not prevent the exercise of that power by the Minister.

(7) Any delegation under this regulation may be revoked at any time.

(8) Until it is revoked, every such delegation shall continue in force according to its tenor, notwithstanding the fact that the Minister by whom it was made may have ceased to hold office, and notwithstanding (in the case of a delegation to the Governor of the Reserve Bank) that the Governor to whom it was made may have ceased to hold office; and in any such case the delegation shall continue in force as if made by or to the successor in office of the Minister or the Governor, as the case may be.

10. Exemptions—(1) The Minister may from time to time in his discretion grant exemptions from the application of any of the provisions of these regulations.

(2) Any such exemption may be granted in respect of—

(a) Any specified amount or portion of the investments of finance companies:

(b) Any class or classes of finance companies:

(c) Any particular finance company:

(d) Such transactions, or class or classes of transactions, as the Minister may determine.

(3) Any such exemption may be granted wholly or partly and either unconditionally or subject to such conditions as the Minister thinks fit.

(4) Any exemption granted under these regulations may at any time be revoked by the Minister (whether or not he granted it) or by the other person (if any) by whom it was granted; and any condition subject to which any such exemption is granted may from time to time be revoked, varied, or added to by the Minister or by the other person (if any) who granted it.

(5) Every person who applies to the Minister or to any other person for any exemption under these regulations shall furnish such information and particulars and in such form as the Minister or that other person may from time to time require.

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

(2) The Minister may, without any notice in the *Gazette*, give notice to any person of the exercise of any of his powers under these regulations, or of any direction or determination given or made by him 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 the Bank 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.

12. Supply of information—(1) For the purposes of these regulations, the Minister may from time to time, by notice in writing to any finance company, or by notice in the *Gazette* applying to finance companies or any specified class of finance companies, require such company or companies to supply to the Minister or as he directs such returns or information relating to matters to which these regulations apply as may be specified in the notice.

(2) No finance company shall be required under this regulation to supply any information with respect to the identity or affairs of any particular person from whom the finance company has accepted any money or with or in respect of whom the company has made any investment.

13. Production of books, etc.—If the Minister has reason to suspect that any finance company has committed an offence against these regulations, he may, by notice in writing to the finance company, require the finance company to produce to the Minister or as he directs any books or documents that may be in the possession or under the control of the finance company and that in his opinion may furnish evidence in relation to that offence.

14. Overseas Investment Regulations 1974 not affected—Nothing in these regulations limits or affects the operation of the Overseas Investment Regulations 1974*.

15. Offences—Every person commits an offence, and shall be liable accordingly under section 52 of the Reserve Bank of New Zealand Act 1964, who—

- (a) With intent to deceive, makes any false or misleading statement or any material omission in any declaration made for the purposes of these regulations or in any communication with or application to the Minister or any other person (whether in writing or otherwise) for the purposes of these regulations:
- (b) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under these regulations:
- (c) Without lawful excuse, acts in contravention of or fails to comply in any respect with any provision of these regulations or any direction, notice, requirement, or condition given or imposed under these regulations.

16. Revocations—(1) The regulations and the Order in Council specified in the Schedule to these regulations are hereby revoked.

(2) All exemptions granted under the regulations revoked by subclause (1) of this regulation are hereby revoked.

*S.R. 1974/117

Amendment No. 1: S.R. 1978/79

Amendment No. 2: S.R. 1979/270

Reg. 16 (1)

SCHEDULE

REGULATIONS AND ORDER IN COUNCIL REVOKED

Title	Statutory Regulations Serial Number
The Finance Companies (Investment) Regulations (No. 2) 1969	1969/216
The Finance Companies (Investment) Regulations (No. 2) 1969, Amendment No. 1	1970/148
The Finance Companies (Investment) Regulations (No. 2) 1969, Amendment No. 2	1977/154
The Finance Companies (Investment) Regulations (No. 2) 1969, Amendment No. 3	1980/7
The Finance Companies (Government Stock) Order 1980	1980/105

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 April 1983, are in substitution for the Finance Companies (Investment) Regulations (No. 2) 1969. The general effect of the regulations is the same as that of the revoked regulations, namely, that every finance company is to hold Government stock in accordance with a prescribed ratio; but there are a number of important differences between these regulations and the revoked regulations. The method of calculating the ratio is altered from the present formula to a simple percentage of "investments". Special provision is no longer made in respect of related companies.

Regulation 3 redefines the term "finance company". Subject to the exceptions set out in subclause (2) a "finance company" is any person, company, society, or association (not being a bank or a building society) engaged in both "borrowing" and "investing". Subclause (2) provides that at the end of any month any such person, company, society, or association shall not be a "finance company" if—

- (a) His or its investments do not then exceed \$100,000; or
- (b) His or its investments do not then exceed \$2 million and those investments then represent less than 25 percent of his or its total assets; or
- (c) In the case of a natural person, his investments do not then exceed \$2 million.

Regulation 4 redefines the term "borrowings". Borrowings by way of bank overdraft and from related companies are no longer excluded from this definition.

Regulation 5 redefines the term "investment". Investments with related companies are no longer excluded from this definition. New exclusions from the definition are—

- (a) The making of loans by a finance company to employees of any holding company or subsidiary of the finance company;
- (b) The making of loans to, or the depositing of money with, a finance company;
- (c) The making of loans by a finance company to, or the depositing of money by a finance company with, any holding company or subsidiary of the finance company.

Regulation 6 provides that during every month in each year every finance company shall hold and have registered in its name an amount of Government stock at least equal in nominal value to 18 percent of its investments as at the end of the immediately preceding month. The provision is new to the extent that—

- (a) It refers to every month (instead of to every quarter); and
- (b) It requires the stock to be registered in the name of the finance company; and
- (c) It refers to the nominal value of the Government stock; and
- (d) It specifies the relevant percentage and does not leave it to be specified by Order in Council.

Regulation 7 re-enacts an existing provision requiring finance companies to register with the Reserve Bank.

Regulation 8 now requires finance companies to supply monthly returns of investments instead of quarterly returns of borrowings.

Regulation 9 re-enacts the existing provision relating to the delegation of the Minister's powers.

Regulation 10 re-enacts, with a minor amendment, the existing provision relating to the granting of exemptions.

Regulation 11 re-enacts the existing provision relating to the supply of information.

Regulation 12 re-enacts, with a minor amendment, the existing provision relating to the production of books, etc.

Regulation 15 re-enacts the existing provision relating to offences and penalties.

Regulation 16 revokes the Finance Companies (Investment) Regulations (No. 2) 1969 and their amendments. The revocation applies to all exemptions granted under the revoked regulations.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 24 February 1983.

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