



**THE OVERSEAS INVESTMENT REGULATIONS 1985,  
AMENDMENT NO. 2**

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PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 24th day of July 1989

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Overseas Investment Act 1973, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Overseas Investment Regulations 1985, Amendment No. 2, and shall be read together with and deemed part of the Overseas Investment Regulations 1985\* (hereinafter referred to as the principal regulations.)

(2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

**2. Interpretation**—(1) Regulation 2 (1) of the principal regulations is hereby amended by inserting after the definition of the term “the Act”, the following definition:

“‘Broadcasting’ has the same meaning as in the Broadcasting Act 1976.”

(2) Regulation 2 (1) of the principal regulations is hereby further amended by inserting after the definition of the term "Commission", the following definitions:

"'Estate or interest' includes—

(a) Any right or interest as purchaser under any agreement to purchase or acquire any estate or interest; or

(b) An option or right to purchase or acquire any estate or interest."

"'Exclusive economic zone' means the exclusive economic zone of New Zealand as defined in section 9 of the Territorial Sea and Exclusive Economic Zone Act 1977:"

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

"'Rural land' means land which under any proposed or operative district scheme under the Town and Country Planning Act 1977 is zoned for rural purposes or is so zoned that farming of any kind is a predominant or conditional use in that zone:"

(4) Regulation 2 (1) of the principal regulations is hereby further amended by inserting after the definition of the term "share", the following definition:

"'Specified business' means a business referred to in the Second Schedule to these regulations:"

**3. Exemption from application of regulation 3**—Regulation 4 of the principal regulations is hereby amended by inserting after paragraph (a), the following paragraph:

"(ab) To the issue or allotment of shares by a body corporate incorporated in New Zealand or an unincorporated body of persons if—

"(i) The total value of all the shares in the body corporate or unincorporated body of persons after the issue or allotment does not exceed \$10,000,000; and

"(ii) The consideration paid or payable, or provided or to be provided, including any consideration payable or to be provided after the issue or allotment, does not exceed \$10,000,000; and

"(iii) The body corporate or unincorporated body of persons does not own, or have any estate or interest in, rural land; and

"(iv) The body corporate or unincorporated body of persons does not carry on, or propose to carry on, any specified business."

**4. Exemption from application of this Part**—The principal regulations are hereby amended by inserting after regulation 16, the following regulation:

"16A. (1) Nothing in regulations 7 to 15 of these regulations applies to a take-over offer made or proposed to be made where—

"(a) The consideration payable or to be provided for the acquisition of shares in the offeree company or offeree building society under a take-over scheme does not exceed \$10,000,000; and

"(b) The assets of the offeree company or offeree building society as disclosed in the financial statements for the most recently completed accounting period do not exceed \$10,000,000; and

“(c) The offeree company or offeree building society does not own, or have any estate or interest in, rural land; and

“(d) The offeree company or offeree building society does not carry on a specified business.

“(2) Nothing in regulation 16 of these regulations applies to the giving effect to of a provision of a contract or agreement which provides for the transfer of shares in a company or building society to an overseas person where—

“(a) The consideration paid or payable, or provided or to be provided, for the transfer of the shares in the company or building society does not exceed \$10,000,000; and

“(b) The assets of the company or building society as disclosed in the financial statements for the most recently completed accounting period do not exceed \$10,000,000; and

“(c) The company or building society does not own, or have any estate or interest in, rural land; and

“(d) The company or building society does not carry on a specified business.”

**5. Carrying on business in New Zealand**—The principal regulations are hereby amended by revoking regulation 17, and substituting the following regulation:

“17. (1) Except with the consent of the Minister, it shall not be lawful for an overseas person not lawfully carrying on business in New Zealand at the commencement of the Overseas Investment Regulations 1985, Amendment No. 2, to carry on 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 aggregate exceed, 3 months in any year.

“(2) Nothing in subclause (1) of this regulation applies to the carrying on of a business if—

“(a) The total expenditure expected to be incurred in establishing and carrying on the business does not exceed \$10,000,000; and

“(b) The business is not a specified business.

“(3) Notwithstanding any other provision of these regulations, except with the consent of the Minister, it shall not be lawful for any overseas person to commence to carry on a specified business which that overseas person was not lawfully carrying on at the commencement of the Overseas Investment Regulations 1983, Amendment No. 2.”

**6. Acquisition of assets**—The principal regulations are hereby amended by revoking regulation 18, and substituting the following regulation:

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

“(2) Nothing in subclause (1) of this regulation applies to a contract, transaction, or arrangement if—

“(a) The total consideration payable for the acquisition of the property does not exceed \$10,000,000; and

“(b) The property is not used, or proposed to be used, in carrying on a specified business.

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

**7. Revocations and savings**—Regulation 26 of the principal regulations is hereby amended by inserting before the word “Schedule” the word “First”.

**8. Revocation**—The Overseas Investment Regulations 1985, Amendment No. 1 are hereby consequentially revoked.

**9. New Schedule added to principal regulations**—(1) The principal regulations are hereby amended by adding the Second Schedule set out in the Schedule to these regulations.

(2) The Schedule to the principal regulations is hereby consequentially amended by omitting the heading “SCHEDULE”, and substituting the following heading and sub-heading:

“SCHEDULES  
FIRST SCHEDULE”.

SCHEDULE

NEW SECOND SCHEDULE TO PRINCIPAL REGULATIONS

“SECOND SCHEDULE

“SPECIFIED BUSINESSES

- “1. The business of broadcasting.
- “2. Commercial fishing within the exclusive economic zone.
- “3. Any business carried on on, or involving the use of, rural land.”

MARIE SHROFF,  
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 the 28th day after the date of their notification in the *Gazette*, exclude certain transactions from the scope of the Overseas Investment Regulations 1985.

*Regulation 3* exempts from the application of regulation 3 of the principal regulations (which relates to the requirement for consent to the issue or allotment of shares to an overseas person) the issue or allotment of shares where—

- (a) The total value of the shares in the body corporate or unincorporated body after the issue or allotment does not exceed \$10,000,000; and
- (b) The consideration for the issue or allotment does not exceed \$10,000,000; and
- (c) The body corporate or unincorporated body does not own, or have an estate or interest in, rural land (as that term is defined); and

(d) The body corporate or unincorporated body does not carry on, or propose to carry on, a specified business.

The term "specified business" is defined as—

(a) The business of broadcasting;

(b) Commercial fishing in New Zealand's exclusive economic zone;

(c) Any business carried on on, or involving the use of, rural land.

*Regulation 4* inserts a new regulation 16A into the principal regulations. Regulation 16A (1) exempts from Part II of the principal regulations (which relates to the requirement for consent to take-overs by overseas persons) any take-over offer where—

(a) The consideration for the acquisition of the shares does not exceed \$10,000,000; and

(b) The assets of the company or building society do not exceed \$10,000,000; and

(c) The company or building society does not own, or have an estate or interest in, rural land; and

(d) The company or building society does not carry on a specified business (as that term is defined).

*Regulation 16A (2)* makes a similar alteration to the application of regulation 16 of the principal regulations.

*Regulation 5* substitutes a new regulation 17 in the principal regulations. The new regulation 17 prohibits an overseas person not lawfully carrying on business at the commencement of the regulations from carrying on business for a period or periods exceeding 3 months in any year without the consent of the Minister of Finance. Such consent is not required if the expenditure expected to be incurred in establishing and carrying on the business does not exceed \$10,000,000 and the business is not a specified business (as that term is defined).

The new regulation also prohibits an overseas person commencing to carry on a specified business (as that term is defined) which it is not lawfully carrying on at the commencement of the regulations without the consent of the Minister of Finance.

*Regulation 6* substitutes a new regulation 18 in the principal regulations. The new regulation 18 prohibits an overseas person entering into a contract or transaction or making any arrangement to acquire all or substantially all of the property in New Zealand used to carry on a business without the consent of the Minister of Finance.

Such consent is not required if the consideration for the acquisition does not exceed \$10,000,000 and the property is not used, or proposed to be used, in carrying on a specified business (as that term is defined).

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 27 July 1989.

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