

1964/221



THE OVERSEAS TAKE-OVERS REGULATIONS 1964

BERNARD FERGUSSON, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 22nd day of December
1964

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to 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.

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Overseas Take-overs Regulations 1964.

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

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

“Minister” means the Minister of Finance:

“Nominee”, in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of the first-mentioned person, or who holds shares directly or indirectly on behalf of that person:

“Offer” includes an invitation to make an offer:

“Offeree” means a holder of shares which are included in a take-over offer:

“Offeree company” means a company whose shares, or any of them, are proposed to be acquired under a take-over scheme:

“Offeror” means a person who makes a take-over offer, whether in concert or jointly with any other person or not, and whether by himself or by an agent:

“Overseas person” means—

(a) Any person not ordinarily resident in New Zealand; or

(b) Any company or body corporate that is incorporated outside New Zealand, or any company within the meaning of the Companies Act 1955 that is for the purposes of that Act a subsidiary of any company or body corporate incorporated outside New Zealand; or

(c) Any company, within the meaning of the Companies Act 1955, in which shares are held by overseas persons, if those shares, in the aggregate, carry the right to exercise or control the exercise of 25 per cent or more of the voting power at any general meeting of the company:

“Registrar” means the person designated as Registrar under these regulations:

“Share” has the same meaning as in the Companies Act 1955:

“Take-over offer” means an offer, whether in writing or not, for the acquisition of shares under a take-over scheme:

“Take-over scheme” means a scheme involving the making of offers for the acquisition of any shares in a company which together with shares, if any, to which the offeror is already beneficially entitled, carry the right to exercise or control the exercise of 25 per cent or more of the voting power at any general meeting of the offeree company.

(2) For the purposes of paragraph (a) of the definition of the expression “overseas person” in subclause (1) of this regulation, a person shall be deemed to be ordinarily resident in New Zealand at any time if at that time—

(a) He is domiciled in New Zealand; or

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

(3) The reference in the definition of the expression “take-over scheme” in subclause (1) of this regulation to shares to which the offeror is beneficially entitled shall be read as including a reference to—

(a) Shares held by any person or body corporate as trustee for or nominee or agent of the offeror; and

(b) Shares in or over which the offeror has any right, title, interest, or control, or in respect of which he has any control over the vote; and

(c) Shares which the offeror is or will be entitled to acquire under any option or on the fulfilment of any condition under any agreement relating to the acquisition of any other shares in the offeree company; and

(d) If the offeror is a company within the meaning of section 158 of the Companies Act 1955, shares to which any subsidiary or holding company of the offeror or any other subsidiary of the offeror’s holding company is already beneficially entitled, or which any such subsidiary or holding company is or will be entitled to acquire in any such manner as aforesaid.

3. Registrar—For the purposes of these regulations there shall be a Registrar, who shall be an officer of the Reserve Bank of New Zealand designated in that behalf by the Minister.

4. Notice to Registrar of take-over offers by overseas persons—

(1) Where take-over offers are made or proposed to be made to offerees by or on behalf of any overseas person, the offeror or his agent shall, on or before the date of the offers, send to the Registrar, at the Head

Office of the Reserve Bank of New Zealand at Wellington, notice in writing stating that the offers are being made or, as the case may require, are proposed to be made.

(2) The notice shall—

- (a) Specify an address for service to which any notice or other document addressed to the offeror or his agent under these regulations may be sent:
- (b) State the date of the offers, if made:
- (c) Specify the matters required by Part B of the First Schedule to the Companies Amendment Act 1963 to be stated in every take-over offer (whether or not the offer is one to which that Act applies):
- (d) Where any offeror is a company or other body corporate, whether incorporated in New Zealand or elsewhere, and the consideration offered or proposed to be offered for the shares in the offeree company consists in whole or in part of securities (as defined in Part C of the First Schedule to the Companies Amendment Act 1963) issued or to be issued by the offeror or by any other company or body corporate, contain or have attached the statements, summary, and accounts and reports required by paragraphs (a), (b), (c), (d) (iii), and (e) of clause 3 and clauses 4 and 5 of Part C of the First Schedule to the Companies Amendment Act 1963, whether or not the case is one to which that Part otherwise applies:
- (e) Where any offeror is a company or other body corporate, whether incorporated in New Zealand or elsewhere, and the shares in the offeree company are proposed to be acquired wholly for cash, contain or have attached, in relation to the offeror, the summary, statements, and accounts and reports required by paragraphs (c) and (d) (iii) of clause 3 and clauses 4 and 5 of Part C of the First Schedule to the Companies Amendment Act 1963, as if the offeror were a company whose securities are offered within the meaning of that Part and the case were one to which that Part applies:
- (f) State whether any offeror (being a company or other body corporate) is a subsidiary, for the purposes of the Companies Act 1955, of any other company or body corporate, and, if so, state the name and the address of the registered office of its holding company:
- (g) Where any offeror is beneficially entitled to any shares in any company (other than the offeree company) incorporated in New Zealand, state the name and the address of the registered office of that company and particulars of the shares so held:
- (h) Specify an estimate of the total consideration expected to be paid if the take-over offers are accepted, and whether and to what extent such consideration is to be paid in cash or in shares or otherwise; and if the whole or any part of that consideration is to be paid in cash, whether and to what extent the payment is to be made from overseas funds or from funds held in New Zealand.

(3) For the purposes of subclause (2) of this regulation, the reference in paragraph (e) of Part B of the First Schedule to the Companies Amendment Act 1963 to shares to which each of the offerors is

beneficially entitled shall be read as including, in addition to the matters set out in that paragraph, a reference to shares to which paragraphs (a) and (b) of regulation 2 (3) hereof apply.

5. Registrar to register notice—On receipt of a notice that complies with regulation 4 hereof, the Registrar shall forthwith register the notice in a register to be kept by him for the purpose, and notify the offeror or his agent, in writing, of the date of registration.

6. Supply of further information and particulars—The offeror or his agent shall from time to time supply to the Registrar such further information and particulars in relation to the take-over offers as may reasonably be required for the purpose of enabling the Minister to exercise his powers under these regulations.

7. Consideration of notice—(1) Within 14 days after the date of the registration of the notice under regulation 5 hereof, the Minister shall determine whether or not the take-over offers (whether made or proposed to be made) should be further considered with a view to requiring his consent thereto.

(2) On such determination being made the Registrar shall forthwith give notice in writing to the offeror or his agent of the determination.

8. Offers to be made subject to these regulations—(1) Unless before any take-over offer is made to any offeree by or on behalf of any overseas person the offeror or his agent has received notice in writing from the Registrar stating either that the Minister's consent has been granted or that the Minister has determined that no further consideration of the take-over offers is required, every such offer made to any offeree shall state—

- (a) That the offer is made subject to these regulations; and
- (b) That notice of the making of the offer has been given to the Registrar under these regulations; and
- (c) That the offer will not become effective until notice to that effect is given to the offeree pursuant to these regulations.

(2) Where before any take-over offer is made to any offeree by or on behalf of any overseas person the offeror or his agent receives notice in writing from the Registrar stating either that the Minister's consent has been granted or that the Minister has determined that no further consideration of the take-over offers is required, every such offer made to any offeree shall state that fact.

9. When take-over offers to become effective—(1) Where in any case to which regulation 8 (1) hereof applies the Minister determines that no further consideration of the take-over offers is required, the offers shall become effective forthwith on the receipt by the offeror or his agent of the notice to that effect under regulation 7 (2) hereof.

(2) Where in any case to which regulation 8 (1) hereof applies the Minister determines that further consideration of the take-over offers is required, the offers shall become effective—

- (a) On the receipt by the offeror or his agent of notice in writing from the Registrar that the Minister's consent has been granted; or
 - (b) If no such notice, and no notice of the refusal of such consent, has been received from the Registrar by the offeror or his agent within six weeks after the date of the registration, under regulation 5 hereof, of the notice of the take-over offers, then at the expiry of the said period of six weeks.
- (3) When the take-over offers become effective under this regulation, the offeror or his agent shall forthwith give notice in writing to every offeree stating that the offer has become effective in accordance with these regulations, and, where the Minister's consent has been granted upon or subject to any terms or conditions, stating those terms and conditions so far as they affect the terms of the offer as between the offeror and the offeree.

10. When take-over offers deemed revoked—Except as provided in regulation 9 (2) (b) hereof, every take-over offer to which regulation 8 (1) hereof applies shall be deemed to be revoked on the receipt by the offeror or his agent of notice in writing from the Registrar that the Minister's consent has been refused; and the offeror or his agent shall forthwith give notice in writing to every offeree stating that the offers have been revoked in accordance with these regulations.

11. Grant or refusal of consent—(1) For the purposes of these regulations, the Minister may in his discretion refuse his consent to take-over offers made or proposed to be made by or on behalf of any overseas person, or may grant his consent either unconditionally or upon or subject to such terms and conditions as he thinks fit.

(2) Where such consent is granted or refused, it shall be the duty of the Registrar forthwith to give notice in writing of the grant or refusal to the offeror or his agent.

12. Delegation of Minister's powers under these regulations—(1) The Minister may from time to time by writing under his hand delegate to any person any of his powers under these regulations, including this power of delegation.

(2) Subject to any general or special directions given or conditions attached by the Minister, any person to whom any powers are 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.

(3) Any person purporting to act pursuant to any such delegation shall be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.

(4) Any such delegation may be revoked at any time.

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

13. Notices to offeror at address for service—Every notice or other document sent to any offeror or his agent for any of the purposes of these regulations may be delivered or posted by letter addressed to him at the address for service specified in the notice under regulation 4

hereof; and if so posted the notice or document shall be deemed to have been served at the time when the letter would be delivered in the ordinary course of post.

14. Part I of Companies Amendment Act 1963 to be complied with—Nothing in these regulations shall render unnecessary compliance with Part I of the Companies Amendment Act 1963 (which relates to take-over offers).

15. Contract to be unlawful and void in certain circumstances—

(1) Where take-over offers are made to offerees by or on behalf of any overseas person, and

(a) Notice in writing stating that the offers are being made or are proposed to be made has not been given to the Registrar by the offeror or his agent; or

(b) The offeror or his agent has received from the Registrar, within the period of six weeks referred to in regulation 9 (2) (b) hereof, notice in writing that the Minister's consent has been refused—

any contract for the sale of any shares resulting from the acceptance of any such offer, and any transfer of those shares consequent on such acceptance, shall be unlawful and void.

(2) The directors of the offeree company may refuse to register any transfer of shares in the company if they have reasonable cause to believe that the transfer is unlawful under this regulation.

16. Offences—Every person commits an offence and is 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 notice to or communication with the Minister or the Registrar 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 notice, requirement, or condition given or imposed under these regulations.

T. J. SHERRARD,
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 provide for the registration at the Reserve Bank of New Zealand in Wellington of notice of all take-over offers made or proposed to be made by "overseas persons" (as defined in regulation 2). The general effect of the regulations is that the offeror will be notified, within 14 days after the date of registration, whether further consideration is required; and if such a notification

is given the offeror is to be notified within a further four weeks whether or not the take-over offers are consented to. Pending such a notification the take-over offers, if already made, will not be effective; and if consent is refused they are deemed to be revoked.

Regulation 1: The regulations come into force on the day after the date of their notification in the *Gazette*.

Regulation 2 contains definitions, the most important of which are the definitions of "nominee", "overseas person", and "take-over scheme". The general effect of these definitions is that the regulations will apply to take-over offers made by persons not ordinarily resident in New Zealand, companies or bodies corporate incorporated outside New Zealand or their New Zealand subsidiaries, or New Zealand companies in which 25 per cent or more of the voting power is controlled by overseas persons, if the result of the acquisition of shares under the offers will be that the offeror controls 25 per cent or more of the voting power in the offeree company.

Regulation 3 provides for the appointment of an officer of the Reserve Bank as Registrar for the purposes of the regulations.

Regulation 4 requires that where take-over offers are made or proposed to be made to offerees by or on behalf of any "overseas person" the offeror or his agent must, on or before the date of the offers, give notice of that fact to the Registrar, at the Head Office of the Reserve Bank of New Zealand at Wellington, and give the particulars required by subclause (2).

Regulation 5 provides that the Registrar is to acknowledge and register the notice.

Regulation 6 provides for the supply of such further information and particulars as may reasonably be required to enable the Minister to exercise his powers under the regulations.

Regulation 7 provides that within 14 days after the registration of the notice the Minister is to determine whether or not the take-over offers should be further considered with a view to requiring his consent. The Registrar is to forthwith notify the offeror or his agent of the Minister's determination.

Regulation 8 (1) provides that unless before any take-over offer is made to any offeree by or on behalf of an overseas person the offeror or his agent has received notice that the Minister's consent has been given or that he has determined that no further consideration is required, every such offer shall state that it is made subject to these regulations, that notice has been given to the Registrar, and that the offer will not become effective until notice to that effect has been given to the offeree pursuant to these regulations. Regulation 8 (2) provides that where before the making of any such offer the offeror or his agent receives notice that such consent has been given or that he has determined that no further consideration is required, the offer shall state that fact.

Regulation 9: Where in a case to which regulation 8 (1) applies the Minister determines that no further consideration is required, the offers will become effective forthwith on the receipt by the offeror or his agent of the notice to that effect under regulation 7 (2). Where further consideration is required, the offers will become effective on receipt by the offeror or his agent of notice that consent has been granted; but if no such notice, and no notice of refusal of consent, is received within six weeks after the registration of the offeror's notice (under regulation 5) the offers will become effective at the expiry of that period. In either case the offeror is then to notify every offeree that the offers have become effective under the regulations, and to state in the notification any terms or conditions of the consent so far as they affect the terms of the offer as between the offeror and the offeree.

Regulation 10: If within six weeks after the date of registration of the offeror's notice the offeror or his agent receives notice that the Minister's consent has been refused, every offer to which regulation 8 (1) applies is deemed to be revoked, and the offerees are to be notified accordingly.

Regulation 11 provides that consent may be unconditional or subject to conditions.

Regulation 12 authorises the Minister to delegate any of his powers under the regulations to any person, including the power of delegation.

Regulation 13 provides that notices to the offeror or his agent may be sent to his address for service as specified by him under regulation 4.

Regulation 14 provides that these regulations do not render unnecessary compliance with Part I of the Companies Amendment Act 1963 (which relates to take-over offers generally).

Regulation 15 provides that where take-over offers are made by or on behalf of an "overseas person" to offerees, and notice has not been given to the Registrar, or the Minister's consent has been refused, any contract for the sale of shares resulting from the acceptance of any such offer, and any consequent transfer of shares, is unlawful and void. The directors of the offeree company may refuse to register any transfer if they have reasonable cause to believe that the transfer is unlawful.

Regulation 16 sets out the offence provisions, the penalties for which are set out in section 52 of the Reserve Bank of New Zealand Act 1964.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 23 December 1964.

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