



# **Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008**

Anand Satyanand, Governor-General

## **Order in Council**

At Wellington this 3rd day of June 2008

Present:

His Excellency the Governor-General in Council

Pursuant to sections 74 and 78 of the Securities Act 1978, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce, makes the following regulations.

### **Contents**

		Page
1	Title	2
2	Commencement	2
3	Australia designated as country to which recognition scheme applies	2
4	Interpretation	3

### **Part 1**

#### **Recognition scheme when New Zealand is host country**

5	When New Zealand is host country	5
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6	Effect of recognition scheme in relation to offer by Australian issuer of securities in New Zealand	5
7	Class of securities to which this Part applies	7
8	Securities exempt if regulations 9 to 12 satisfied	7
9	Offer must be regulated offer in Australia	7
10	Australian issuer must be entitled under Australian securities legislation to offer securities	7
11	Australian issuer must give notice to Registrar	8
12	Documents that must accompany notice to Registrar	8
13	Ongoing requirements	9

**Part 2**

**Application of New Zealand securities law to New Zealand securities offered in Australia**

14	When Part 2 of Act and Regulations apply to securities offered in Australia by New Zealand issuer	14
15	Notice to Registrar of intention to make offer under Australian recognition scheme	14

**Part 3**

**Notices**

16	Form of notice required by regulation 11 or 13	14
17	Additional information that must be contained in specific notices required by regulation 13(3)	15
18	Form of notice required by regulation 15	16

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**Regulations**

- 1 Title**  
These regulations are the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008.
- 2 Commencement**  
These regulations come into force on the day on which the agreement comes into force.
- 3 Australia designated as country to which recognition scheme applies**  
Australia is designated as the country to which the recognition scheme established by these regulations applies.

#### 4 Interpretation

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

**Act** means the Securities Act 1978

**agreement** means the agreement dated 22 February 2006 between the Government of Australia and the Government of New Zealand in relation to mutual recognition of securities offerings

**Australian collective investment scheme** means a registered scheme as defined in section 9 of the Corporations Act 2001 (Aust)

**Australian issuer** means an issuer who—

- (a) is incorporated under the laws of Australia; or
- (b) in the case of a natural person, is resident in Australia; or
- (c) in the case of a legal person who is not a natural person, is established under the laws of Australia; or
- (d) is registered as a foreign company under the laws of Australia

**Australian recognition scheme** means the recognition scheme provided for in Chapter 8 of the Corporations Act 2001 (Aust) and regulations made under that Act for implementing the agreement

**Australian regulator** means—

- (a) the Australian Securities and Investments Commission established under the Australian Securities and Investments Commission Act 1989 and continued under the Australian Securities and Investments Commission Act 2001; or
- (b) any other similar regulator established by law to replace that Commission

**collective investment scheme** means an Australian collective investment scheme or a New Zealand collective investment scheme

**Commission** has the same meaning as in section 2(1) of the Act

**exempt** means exempt from—

- (a) Part 2 of the Act, except sections 35 (restrictions on door-to-door sales), 38B (prohibition of advertise-

ments), and 58 (criminal liability for misstatement in advertisement or registered prospectus); and

(b) the Regulations

**issuer** includes an offeror who is an issuer under section 6(7) of the Act

**New Zealand collective investment scheme** means a scheme that is operated by a body that is incorporated or formed in New Zealand and that—

(a) is a unit trust as defined in section 2 of the Unit Trusts Act 1960; or

(b) involves the issue of participatory securities in respect of which a statutory supervisor has been appointed under section 33(3) of the Act and a deed of participation has been registered by the Registrar under section 46 of the Act; or

(c) involves the issue of a participatory security that is an interest in a group investment fund established under section 29 of the Trustee Companies Act 1967 or under section 42A of the Public Trust Office Act 1957 or under section 63 of the Public Trust Act 2001 and in respect of which the trustee has appointed another party as a manager of that fund

**New Zealand issuer** means an issuer who—

(a) is incorporated under the laws of New Zealand; or

(b) in the case of a natural person, is resident in New Zealand; or

(c) in the case of a legal person who is not a natural person, is established under the laws of New Zealand; or

(d) is registered as an overseas company under the laws of New Zealand

**product disclosure statement** means a Product Disclosure Statement as defined in section 761A of the Corporations Act 2001 (Aust)

**Registrar** means the Registrar of Companies established under the Companies Act 1993 or any other person established by law to replace the Registrar, and includes a Deputy Registrar or an Assistant Registrar of Companies appointed in accordance with the Companies Act 1993

**regulated offer** means an offer of securities by an Australian issuer in respect of which a disclosure document or a product disclosure statement or a similar offer document is required under Australian securities legislation

**Regulations** means the Securities Regulations 1983

**securities** means any or all of the following securities:

- (a) equity or debt securities:
- (b) interests in collective investment schemes:
- (c) any interest in, or any option to acquire, any of the securities in paragraphs (a) and (b)

**securities legislation** means—

- (a) in relation to Australia, the Corporations Act 2001 and any regulations made under that Act, or any legislation enacted in substitution for that Act or those regulations:
  - (b) in relation to New Zealand, the Act and any regulations made under that Act, or any legislation enacted in substitution for that Act or those regulations.
- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in these regulations has the same meaning as in the Act or the Regulations.

## Part 1

### Recognition scheme when New Zealand is host country

#### 5 When New Zealand is host country

New Zealand is the host country when an offer of securities to which this Part applies is made in New Zealand by an Australian issuer.

#### 6 Effect of recognition scheme in relation to offer by Australian issuer of securities in New Zealand

- (1) Subject to regulation 8(1), securities to which this Part applies are exempt.
- (2) Securities that are exempt under subclause (1) do not cease to be exempt if any of the requirements of regulation 13 are not complied with.

- (3) Nothing in Part 2 of the Act (except sections 38B and 58) or the Regulations applies to an advertisement made by or on behalf of an Australian issuer that—
- (a) states that—
    - (i) the Australian issuer is considering making an offer of securities to the public; and
    - (ii) no money is currently being sought and that no applications for securities will be accepted or money received unless the subscriber has received a disclosure document or a product disclosure statement or a similar offer document; and
    - (iii) it is intended that the offer will be made under these regulations, subject to meeting the requirements of these regulations; and
  - (b) if the Australian issuer wishes, states that the Australian issuer is seeking preliminary indications of interest and, in this case, also states—
    - (i) how indications of interest may be made; and
    - (ii) that no indication of interest will involve an obligation or commitment of any kind; and
  - (c) contains no other information, except any or all of the following:
    - (i) the name of the Australian issuer;
    - (ii) a description of the securities intended to be offered, including a brief description of any rights or privileges to be attached;
    - (iii) the rate or rates of interest (if any) that may be earned by holding the securities intended to be offered;
    - (iv) the total number of securities intended to be offered;
    - (v) a statement of the intended use of the subscriptions;
    - (vi) the terms of the intended offer;
    - (vii) a description of the class of persons to whom it is intended the offer will be made;
    - (viii) the date at which the issuer expects that the offer will be made; and

- (d) is dated and is not distributed to any person later than 6 months after its date.

**7 Class of securities to which this Part applies**

Subject to regulation 8, this Part applies to securities offered to the public in New Zealand by an Australian issuer.

**8 Securities exempt if regulations 9 to 12 satisfied**

- (1) Securities to which this Part applies are exempt if the requirements of regulations 9 to 12 are satisfied.
- (2) This Part does not apply to an offer of securities to the public in New Zealand by an Australian issuer if the Commission has given a notice under regulation 13(4) to the Australian issuer that the Australian issuer must not make further offers under these regulations, and that notice has not been revoked or otherwise expired.
- (3) If satisfied that a failure to meet a requirement contained in regulation 11 or 12 is minor or technical only, the Commission may declare in writing that it is a non-material breach.
- (4) The effect of a declaration of a non-material breach is that the requirement in question is deemed to have been complied with.
- (5) Subject to regulation 11(5), if there is more than 1 Australian issuer of the securities, then compliance by any 1 of them with a requirement of these regulations is deemed to be compliance by the others.

**9 Offer must be regulated offer in Australia**

The offer must be a regulated offer in Australia.

**10 Australian issuer must be entitled under Australian securities legislation to offer securities**

- (1) The Australian issuer must be entitled under Australian securities legislation to offer the securities.
- (2) In particular, without limiting subclause (1), any offer documents required to be lodged with the Australian regulator must have been filed, and any exposure period must have expired.

**11 Australian issuer must give notice to Registrar**

- (1) The Australian issuer must, before making the offer, give a notice to the Registrar that complies with subclause (3).
- (2) The notice, when received by the Registrar, also serves as the opt-in notice referred to in section 73(2) of the Act.
- (3) The notice must—
  - (a) state that the Australian issuer intends to make an offer in accordance with these regulations; and
  - (b) specify the securities to be offered; and
  - (c) specify the proposed offer period for each of—
    - (i) the offer of the securities in New Zealand; and
    - (ii) the offer of the securities in Australia; and
  - (d) state the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand at that address of documents on behalf of the Australian issuer; and
  - (e) state that the Australian issuer submits to the jurisdiction of the courts of New Zealand; and
  - (f) state the Australian issuer's New Zealand overseas issuer registration number (if any); and
  - (g) be accompanied by the documents specified in regulation 12; and
  - (h) comply with the requirements of regulation 16.
- (4) In subclause (3)(c), the proposed offer period for the offer of the securities in Australia must include the proposed offer period for the offer of the securities in New Zealand.
- (5) If there is more than 1 Australian issuer of the securities, each Australian issuer who intends to make an offer in accordance with these regulations must give a notice under this regulation.

**12 Documents that must accompany notice to Registrar**

- (1) The following documents must accompany the notice to the Registrar under regulation 11:
  - (a) the offer documents filed with the Australian regulator or, if the offer can be made without filing with the Australian regulator, the offer documents; and

- (b) a copy of any exemption or declaration relevant to the offer granted or made by the Australian regulator that is specific to the offer or the Australian issuer; and
  - (c) particulars of any general exemptions or declarations relevant to the offer granted or made by the Australian regulator; and
  - (d) to the extent that it is not included as part of the offer documents referred to in paragraph (a),—
    - (i) the constitution (if any) of the Australian issuer, unless subparagraph (ii) applies; or
    - (ii) if the securities to be offered are interests in a collective investment scheme, rights or interests in those interests, or options to acquire those interests by way of issue, the constituent document of the scheme; and
  - (e) a copy of the warning statements referred to in regulation 13(1)(d) to (g).
- (2) In subclause (1)(b) and (c), **exemption or declaration** means an exemption granted, or a declaration made, by the Australian regulator under the Corporations Act 2001 (Aust).

### 13 Ongoing requirements

- (1) The offer must comply with the following ongoing requirements:
- (a) the offer must remain a regulated offer in Australia at all times during which it is open for acceptance by persons in New Zealand; and
  - (b) the offer must comply with the securities legislation of Australia; and
  - (c) the offer must be open to acceptance by persons in Australia at all times during which it is open for acceptance by persons in New Zealand; and
  - (d) if any offer document referred to in regulation 12(1)(a) is provided to any person, the offer document must be accompanied by the following warning statement:  
“(a) This offer to New Zealand investors is a regulated offer made under Australian and New Zealand law. In Australia, this is Chapter 8 of the Corporations Act 2001

and Regulations. In New Zealand, this is Part 5 of the Securities Act 1978 and the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008.”

“(b) This offer and the content of the offer document are principally governed by Australian rather than New Zealand law. In the main, the Corporations Act 2001 and Regulations (Australia) set out how the offer must be made.”

“(c) There are differences in how securities are regulated under Australian law. For example, the disclosure of fees for collective investment schemes is different under the Australian regime.”

“(d) The rights, remedies, and compensation arrangements available to New Zealand investors in Australian securities may differ from the rights, remedies, and compensation arrangements for New Zealand securities.”

“(e) Both the Australian and New Zealand securities regulators have enforcement responsibilities in relation to this offer. If you need to make a complaint about this offer, please contact the Securities Commission, Wellington, New Zealand. The Australian and New Zealand regulators will work together to settle your complaint.”

“(f) The taxation treatment of Australian securities is not the same as for New Zealand securities.”

“(g) If you are uncertain about whether this investment is appropriate for you, you should seek the advice of an appropriately qualified financial adviser.”; and

- (e) if any offer document referred to in regulation 12(1)(a) is provided to any person and the offer involves payments that are not in New Zealand dollars, the offer document must be accompanied by the following additional warning statement:

“(a) The offer may involve a currency exchange risk. The currency for the securities is not New Zealand dollars. The value of the securities will go up or down ac-

ording to changes in the exchange rate between that currency and New Zealand dollars. These changes may be significant.”

“(b) If you expect the securities to pay any amounts in a currency that is not New Zealand dollars, you may incur significant fees in having the funds credited to a bank account in New Zealand in New Zealand dollars.”; and

- (f) if any offer document referred to in regulation 12(1)(a) is provided to any person and the offer involves securities able to be traded on a financial market, the offer document must be accompanied by the following additional warning statement:

“If the securities are able to be traded on a securities market and you wish to trade the securities through that market, you will have to make arrangements for a participant in that market to sell the securities on your behalf. If the securities market does not operate in New Zealand, the way in which the market operates, the regulation of participants in that market, and the information available to you about the securities and trading may differ from securities markets that operate in New Zealand.”; and

- (g) if any offer document referred to in regulation 12(1)(a) is provided to any person and the offer is for the offer of interests in an Australian collective investment scheme and any dispute resolution process described in the offer document is not available in New Zealand, the offer document must be accompanied by the following additional warning statement:

“The dispute resolution process described in this offer document is only available in Australia and is not available in New Zealand.”

- (2) The Australian issuer must comply with the following ongoing requirements during the period of the offer:
- (a) the Australian issuer must provide an offeree, on request, with copies of the relevant constitutional documents in respect of the issuer or the offer; and

- (b) the Australian issuer must ensure that a person who is prohibited by, or under a power exercised under, Australian or New Zealand legislation from being concerned in the management of a company in Australia or New Zealand is not concerned in the management of the issuer; and
- (c) the Australian issuer must ensure that there is, throughout the period of the offer, at least 1 person resident or incorporated in New Zealand who is authorised to accept service in New Zealand at that person's address of documents on behalf of the Australian issuer.
- (3) If an event listed in the first column of the following table occurs in relation to the offer or the Australian issuer, the Australian issuer must give to the Registrar the notice specified in the second column (*see* regulations 16 and 17 for the form and contents of each notice) within the time for filing the notice specified in the third column:

Item	Event	Notice	Time for filing
a	Change made to an offer document or any other document required by the law of Australia in relation to the offer	Notice of change to offer document	No later than 5 working days after the day on which the issuer notified (or should have notified) the Australian regulator of the change
b	Change in issuer's address for service	Notice of change of address for service	At least 5 working days before the change takes effect
c	Supplementary or replacement offer document is required by the law of Australia	Notice of supplementary or replacement offer document	As soon as practicable after the supplementary or replacement offer document is filed with the Australian regulator and no later than 5 working days after the day on which the document is (or should have been) filed with the Australian regulator

Item	Event	Notice	Time for filing
d	Change made to a relevant constitutional document in respect of the issuer or the securities offered	Notice of change to constitutional document	No later than 5 working days after the day on which the issuer notified (or should have notified) the Australian regulator of the change
e	Australian regulator grants, amends, or revokes a general exemption relevant to the offer	Notice of grant of, amendment to, or revocation of, general exemption	No later than 10 working days after the grant, amendment, or revocation of the exemption
f	Australian regulator grants, amends, or revokes an exemption relevant to the offer that is specific to the offer or the issuer	Notice of grant of, amendment to, or revocation of, specific exemption	No later than 5 working days after the grant, amendment, or revocation of the exemption
g	Australian regulator begins an enforcement action, or exercises a power it has under law, in relation to the offer or the issuer	Notice of enforcement action or exercise of power by Australian regulator	No later than 5 working days after the action is taken or the power is exercised

- (4) The Commission may give a written notice to an Australian issuer that it must not make any further offer under these regulations if the Commission is satisfied that—
- (a) 1 or more of the requirements of this regulation have been breached in relation to a previous offer by the Australian issuer or an associate of the Australian issuer under these regulations; and
  - (b) the breach was not minor or technical only.
- (5) The Commission must not give a notice under subclause (4) without first giving the Australian issuer a reasonable opportunity to make representations to the Commission, including the opportunity to appear before the Commission.

**Part 2**  
**Application of New Zealand securities  
law to New Zealand securities offered in  
Australia**

**14 When Part 2 of Act and Regulations apply to securities offered in Australia by New Zealand issuer**

- (1) Subject to subclause (2), Part 2 of the Act (except section 35) and the Regulations apply to securities offered in Australia by a New Zealand issuer when the issuer makes, or purports to make, the offer under the Australian recognition scheme.
- (2) Part 2 of the Act and the Regulations do not apply to securities offered in Australia by a New Zealand issuer under subclause (1) to the extent that the offer is exempted under section 5(5) of the Act from compliance with Part 2 and the Regulations.

**15 Notice to Registrar of intention to make offer under Australian recognition scheme**

- (1) A New Zealand issuer who intends to make an offer of securities in Australia under the Australian recognition scheme must give a notice to the Registrar of the intention to make the offer.
- (2) The notice must comply with the requirements of regulation 18.
- (3) The issuer must give the notice not later than the time when it notifies the Australian regulator of the intention to make the offer.

**Part 3**  
**Notices**

**16 Form of notice required by regulation 11 or 13**

- (1) Every notice required by regulation 11 or 13 must be—
  - (a) signed and dated by the Australian issuer or a person with authority to act on the issuer's behalf; and
  - (b) contain the information set out in subclause (2).
- (2) Every notice required by regulation 11 or 13 must contain the following information:
  - (a) the name of the Australian issuer:

- (b) if applicable, the Australian registered scheme number:
- (c) except in the case of the notice required by regulation 11, the Registrar's reference number:
- (d) the name of the person signing the notice on the Australian issuer's behalf:
- (e) the following details of the person completing the notice:
  - (i) name:
  - (ii) contact address:
  - (iii) telephone number:
  - (iv) fax number (if any):
  - (v) email address (if any).

**17 Additional information that must be contained in specific notices required by regulation 13(3)**

- (1) A notice required by regulation 13(3)(a) (Notice of change to offer document) must—
  - (a) state the date on which the Australian issuer notified (or should have notified) the Australian regulator of the change; and
  - (b) be accompanied by a copy of the document as changed and with the changes marked.
- (2) A notice required by regulation 13(3)(b) (Notice of change of address for service) must state—
  - (a) the Australian issuer's new address for service; and
  - (b) the date on which the change in the Australian issuer's address for service takes effect.
- (3) A notice required by regulation 13(3)(c) (Notice of supplementary or replacement offer document) must—
  - (a) state the date on which the Australian issuer filed (or should have filed) the supplementary or replacement offer document with the Australian regulator; and
  - (b) be accompanied by a copy of the supplementary or replacement offer document.
- (4) A notice required by regulation 13(3)(d) (Notice of change to constitutional document) must—
  - (a) state the date on which the Australian issuer notified (or should have notified) the Australian regulator of the change; and

- (b) be accompanied by a copy of the document as changed with the changes marked.
- (5) A notice required by regulation 13(3)(e) (Notice of grant of, amendment to, or revocation of, general exemption) must—
  - (a) specify the general exemption; and
  - (b) state whether it has been granted, amended, or revoked; and
  - (c) state the date on which it was granted, amended, or revoked.
- (6) A notice required by regulation 13(3)(f) (Notice of grant of, amendment to, or revocation of, specific exemption) must—
  - (a) specify the exemption; and
  - (b) in the case of the grant of, or amendment to, the exemption, be accompanied by a copy of the exemption or amended exemption (with the changes marked); and
  - (c) state the date on which the exemption was granted, amended, or revoked.
- (7) A notice required by regulation 13(3)(g) (Notice of enforcement action or exercise of power by Australian regulator) must—
  - (a) state the date on which the enforcement action began or the power was exercised; and
  - (b) give details of the nature of the enforcement action or the exercise of the power.

## **18 Form of notice required by regulation 15**

- (1) A notice required by regulation 15 (Notice to Registrar of intention to make offer under Australian recognition scheme) must—
  - (a) state that the New Zealand issuer intends to make an offer of securities in Australia under the Australian recognition scheme; and
  - (b) be signed and dated by the New Zealand issuer or a person with authority to act on the New Zealand issuer's behalf; and
  - (c) contain the information set out in subclause (2).
- (2) Every notice required by regulation 15 must contain the following information:
  - (a) the name of the New Zealand issuer:

- (b) the New Zealand issuer's registration number:
- (c) particulars of the securities to be offered:
- (d) the date on which the New Zealand issuer intends to make the offer:
- (e) the name of the person signing the notice on the New Zealand issuer's behalf:
- (f) the following details of the person completing the form:
  - (i) name:
  - (ii) contact address:
  - (iii) telephone number:
  - (iv) fax number (if any):
  - (v) email address (if any).

Martin Bell,  
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 implement an agreement between the New Zealand and Australian Governments for the mutual recognition of securities offerings in their respective countries. That agreement is dated 22 February 2006 but is not yet in force. These regulations come into force on the date on which the agreement comes into force.

The statutory basis for these regulations is found in Part 5 of the Securities Act 1978 (the **Act**). According to section 71 of the Act, the purpose of Part 5 is to enable recognition and application regimes to be implemented that—

- provide for exemptions from Part 2 of the Act (**Part 2**) and the Securities Regulations 1983 (the **Securities Regulations**) so that issuers may offer securities in New Zealand in accordance with the securities laws of designated countries:
- extend the territorial scope of Part 2 and the Securities Regulations so that issuers may offer securities in designated coun-

tries in accordance with New Zealand securities laws, and investors in those countries may rely on and enforce those laws:

- provide for enforcement in New Zealand of fines and pecuniary penalties imposed for breaches of securities laws of designated countries.

These regulations are intended to implement the first of those objectives in relation to securities offered by an Australian issuer of securities to investors in New Zealand, and to implement the second of those objectives in relation to securities offered by a New Zealand issuer to investors in Australia. The comparable provisions in Australia are contained in Chapter 8 of the Corporations Act 2001 (Aust) and amendments made or to be made to the Corporations Regulations 2001 (Aust).

*Regulations 5 to 12* deal with what an Australian issuer must do in order to offer securities in New Zealand under the mutual recognition scheme (the **scheme**) established by these regulations. Section 75 of the Act sets out the matters that must be dealt with by these regulations. In outline, an Australian issuer of securities under a regulated offer in Australia may offer those securities to the public in New Zealand without Part 2 of the Act and the Securities Regulations coming into play (with some exceptions: *see below*) if—

- the offer is a regulated offer in Australia, that is, if a disclosure document or product disclosure statement is required in Australia (*see regulation 9* read with the definition of **regulated offer** in *regulation 4*); and
- the Australian issuer is entitled to offer the securities under Australian securities legislation (*see regulation 10*); and
- the Australian issuer has given the New Zealand Registrar of Companies an opt-in notice accompanied by the requisite documentation (*see regulations 11 and 12*).

The effect of an offer made under the scheme is that almost the whole of Part 2 of the Act, and all of the Securities Regulations, do not apply to the offer. There are 3 exceptions: sections 35 (restrictions on door-to-door sales), 38B (prohibition of advertisements), and 58 (criminal liability for misstatement in advertisement or registered prospectus). Under *regulation 13*, the Australian issuer has a number of ongoing responsibilities: failure to comply does not jeopardise an exemption

under the scheme, but breach may preclude future offers under the scheme.

Just as the Australian Corporations Regulations 2001 extend Australian securities law to offers by Australian issuers in New Zealand under the scheme, *regulation 14* extends Part 2 and the Securities Regulations to offers by New Zealand issuers in Australia. Under *regulation 15*, a New Zealand issuer who intends to offer securities in Australia under the scheme must give notice to the New Zealand Registrar of Companies.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
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These regulations are administered by the Ministry of Economic Development.

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