



## Financial Reporting Act (Overseas Companies) Exemption Notice 2013

Pursuant to section 35A of the Financial Reporting Act 1993, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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### Notice

- 1 Title**  
This notice is the Financial Reporting Act (Overseas Companies) Exemption Notice 2013.
- 2 Commencement**  
This notice comes into force on the day after the date of its notification in the *Gazette*.

### 3 Revocation

This notice is revoked on the close of 28 February 2018.

### 4 Application

An exemption granted by this notice applies to the following accounting periods of an exempt issuer:

- (a) an accounting period of the issuer that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before copies of financial statements or group financial statements for that period would, but for the exemptions contained in this notice, be required to be delivered for registration under section 18 of the Act; and
- (b) subsequent accounting periods.

### 5 Interpretation

- (1) In this notice, unless the context otherwise requires,—

**Act** means the Financial Reporting Act 1993

**approved auditor** means an accountant who is qualified under the law of the home jurisdiction of an exempt issuer to give an opinion as to whether specified financial statements comply with the overseas GAAP of that jurisdiction

**exempt issuer** means an issuer that—

- (a) is incorporated in a specified jurisdiction (its **home jurisdiction**); and
- (b) is required to comply with the same financial reporting requirements of the overseas legislation of its home jurisdiction that apply to listed issuers in the home jurisdiction; and
- (c) has specified financial statements prepared in respect of it; and
- (d) has offered or offers securities to the public in New Zealand in reliance on—
  - (i) the Securities Act (Overseas Companies) Exemption Notice 1983; or
  - (ii) the Securities Act (Overseas Companies) Exemption Notice 1984; or

- (iii) the Securities Act (Overseas Companies) Exemption Notice 1986; or
  - (iv) the Securities Act (Overseas Companies) Exemption Notice (No 2) 1986; or
  - (v) the Securities Act (Overseas Companies) Exemption Notice 1993; or
  - (vi) the Securities Act (Overseas Companies) Exemption Notice 1995; or
  - (vii) the Securities Act (Overseas Companies) Exemption Notice 1997; or
  - (viii) the Securities Act (Overseas Companies) Exemption Notice 2002 (or a notice that, with or without modification, replaces or corresponds to that notice); and
- (e) has not offered and does not offer securities to the public in New Zealand otherwise than in reliance on 1 or more of the notices referred to in paragraph (d); and
- (f) is not a licensed insurer

**home jurisdiction**, in relation to an issuer, means a specified jurisdiction in which the issuer is incorporated

**International Financial Reporting Standards** means—

- (a) International Financial Reporting Standards and International Accounting Standards that have been issued or adopted by the International Accounting Standards Board in accordance with the constitution of the International Accounting Standards Committee Foundation; and
- (b) final interpretations by the International Financial Reporting Interpretations Committee approved by the International Accounting Standards Board in accordance with that constitution

**overseas GAAP**, in relation to an exempt issuer, means generally accepted accounting practice or principles in its home jurisdiction, as specified in the third column of the Schedule

**overseas legislation**, in relation to an exempt issuer, means the legislation of its home jurisdiction, as specified in the second column of the Schedule (or legislation that, with or without modification, replaces or corresponds to that legislation)

**scheme** means a scheme (within the meaning of section 2(1) of the Securities Act 1978) in respect of which interests have been offered for subscription to the public in New Zealand

**separate fund** has the meaning given to that term under section 9A(1) of the Act

**specified financial statements**, in relation to an exempt issuer,—

- (a) means the financial statements that are required to be prepared in respect of either or both of the exempt issuer and its group, as applicable, in accordance with the laws of its home jurisdiction (including the overseas legislation); and
- (b) includes, in respect of an exempt issuer that is an issuer of securities in relation to a scheme, financial statements in respect of each scheme and, if the liabilities of the issuer or the scheme are limited to a separate fund, financial statements for that separate fund that are prepared in accordance with the laws of its home jurisdiction

**specified jurisdiction** means a jurisdiction specified in the first column of the Schedule.

- (2) For the purposes of this notice, **carries on business in New Zealand** has the same meaning as in section 332 of the Companies Act 1993, except that an exempt issuer is not taken to carry on business in New Zealand merely because it has established or used a share transfer office or a share registration office in New Zealand.
- (3) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

## **6 Exemptions for directors of exempt issuers**

Every director of an exempt issuer is exempted from sections 10(1), 11, 13 to 16, and 18(1) of the Act in respect of the exempt issuer.

## **7 Conditions**

- (1) The exemptions in clause 6 are subject to the conditions that—

*Parent and/or group financial statements*

- (a) the exempt issuer, in relation to its specified financial statements, complies with the laws of its home jurisdiction that relate to the preparation, content, audit, and public filing of those statements (including the overseas legislation); and
- (b) the specified financial statements of the exempt issuer comply with the overseas GAAP; and
- (c) if, in complying with the overseas GAAP, the specified financial statements do not give a true and fair view of the matters to which they relate, they are accompanied, when distributed to a New Zealand resident investor, by a statement in English containing information and explanations that will give a true and fair view of those matters; and
- (d) the specified financial statements and audit report, when distributed to a New Zealand resident investor, are in English or accompanied by an English translation; and

*Branch financial statements*

- (e) if the exempt issuer carries on business in New Zealand, the exempt issuer complies either with subparagraphs (i) to (v) or with subparagraph (vi) and, in either case, with subparagraph (vii) as follows:

*Option 1: branch financial statements in  
accordance with overseas law*

- (i) the exempt issuer prepares financial statements that comply with the laws of its home jurisdiction that relate to the preparation, content, and audit of financial statements in respect of either or both of its New Zealand business and its group's New Zealand business, as applicable, as if that New Zealand business were conducted by a separate company or group incorporated in its home jurisdiction (**branch financial statements**); and
- (ii) the branch financial statements comply with the overseas GAAP; and
- (iii) if, in complying with the overseas GAAP, the branch financial statements do not give a true and fair view of the matters to which they relate, they

- are accompanied, when delivered to the Registrar for registration, by a statement in English containing information and explanations that will give a true and fair view of those matters; and
- (iv) the branch financial statements are accompanied, when delivered to the Registrar for registration, by a report by an approved auditor, issued either in the approved auditor's own name or in the name of an audit firm of which the approved auditor is a partner, member, or employee, that complies with the requirements specified in the fourth column of the Schedule; and
  - (v) the branch financial statements are delivered to the Registrar for registration annually, and no later than the date on which financial statements would, but for the exemptions in this notice, be required to be delivered for registration; or  
*Option 2: branch financial statements in accordance with New Zealand law*
  - (vi) the exempt issuer prepares financial statements and, if applicable, group financial statements in respect of its, and its group's, New Zealand business, as if that business were conducted by a separate company or group incorporated in New Zealand, and the exempt issuer complies with the provisions of the Act that relate to the preparation, content, audit, and registration of those statements; and  
*All branch financial statements*
  - (vii) all branch financial statements and audit reports that are delivered to the Registrar by the exempt issuer (if any) are in English or accompanied by an English translation.
- (2) The exemption in clause 6 from section 18(1) of the Act is subject to the condition that the copy of all financial statements that are delivered to the Registrar by the exempt issuer (if any) includes, or is accompanied by, a statement to the effect that the exempt issuer has relied on this exemption notice in respect of its financial statements for the relevant accounting period.

**8 Revocation**

The Financial Reporting Act (Overseas Companies) Exemption Notice 2007 (SR 2007/275) is revoked.

**9 Transitional provision**

Clause 7(1)(e) does not apply to an exempt issuer who relied on the Financial Reporting Act (Overseas Companies) Exemption Notice 2007 in relation to an accounting period that commenced before the commencement of this notice.

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**Schedule**

cls 5, 7

**Overseas legislation and GAAP of  
specified jurisdictions**

<b>Specified jurisdiction</b>	<b>Overseas legislation</b>	<b>Overseas GAAP</b>	<b>Auditor report requirements</b>
Australia	Corporations Act 2001 (Aust)	Australian equivalents to International Financial Reporting Standards	Section 302 of the Corporations Act 2001 (Aust)
Canada	Securities Act R.S.O. 1990, Chapter S.5 (Ontario)	Canadian equivalents to International Financial Reporting Standards	Section 78 of the Securities Act R.S.O. 1990, Chapter S.5 (Ontario)
Hong Kong	Companies Ordinance (Hong Kong)	Hong Kong International Financial Reporting Standards	Cap 32 Companies Ordinance (Hong Kong)
United Kingdom	Companies Act 2006 (UK)	Generally accepted accounting principles in the United Kingdom or International Accounting Standards (within the meaning of Regulation (EC) No 1606/2002)	Section 495 of the Companies Act 2006 (UK)
United States of America	Securities Exchange Act of 1934 (US) and the Code of Federal Regulations (US)	Generally accepted accounting practice in the United States of America	Title 17, Part 210 of the Code of Federal Regulations (US)

Dated at Wellington this 25th day of March 2013.

Sue Brown,  
Head of Primary Regulatory Operations.

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### **Statement of reasons**

This notice comes into force on the day after the date of its notification in the *Gazette* and is revoked on the close of 28 February 2018. This notice revokes and replaces the Financial Reporting Act (Overseas Companies) Exemption Notice 2007.

This notice applies to directors of certain issuers incorporated in Australia, Canada, Hong Kong, the United Kingdom, and the United States of America.

The context is that directors of those issuers may use this notice in conjunction with the Securities Act (Overseas Companies) Exemption Notice 2013 or other overseas companies notices that correspond to that notice (the **overseas companies securities notices**). Those notices exempt offers of quoted securities to persons who already hold securities issued by that issuer or by a related body corporate that is a promoter of the offer.

This notice exempts directors of those issuers from the following provisions of the Financial Reporting Act 1993 (the **Act**):

- section 10(1) (obligation to prepare financial statements);
- section 11 (content of financial statements);
- sections 13 to 16 (obligations in respect of group financial statements and audit);
- section 18(1) (registration of financial statements).

These exemptions are granted on the conditions that the issuer prepares the financial statements that they are required to prepare, and files them, under the financial reporting requirements of their respective home jurisdictions.

The principal changes from the Financial Reporting Act (Overseas Companies) Exemption Notice 2007 are as follows:

- Canada and Hong Kong are added as specified jurisdictions:



- this notice clarifies that the exemptions apply only if the issuer is regulated as an issuer for the purposes of financial reporting requirements in the jurisdiction in which it is incorporated:
- this notice requires the issuer to prepare financial statements for its, and its group's, New Zealand business, either in accordance with the financial reporting requirements of their home jurisdiction or in accordance with the Act:
- this notice clarifies that the issuer is not required to prepare both group and parent financial statements if this is not required in the home jurisdiction. This notice permits issuers to prepare just group financial statements if this is permitted by the requirements of their home jurisdiction. The general position overseas is that the issuer will be required to prepare financial statements for the issuer itself if it has no subsidiaries and for the group if it has subsidiaries. If group financial statements are prepared, home jurisdiction laws will determine whether there are parent financial statements or whether information about the parent is in the notes.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 35A(2) of the Act, considers it appropriate to grant the exemptions because—

- there will not be any significant detriment to subscribers in New Zealand because the exemptions apply only to issuers that already have New Zealand security holders that become security holders as a result of a public offer in New Zealand. Security holders in these issuers will already be familiar with the format of financial reports prepared by these issuers:
- the financial reporting and audit requirements that must be complied with by issuers in these jurisdictions that have relied, or rely, on the overseas companies securities notices will provide equivalent information to New Zealand security holders as would be provided by financial statements prepared in accordance with New Zealand law requirements:
- the exemption from the registration requirement recognises that overseas companies that are issuers only under the overseas companies securities notices have a comparatively minor association with New Zealand securities law, which does not

justify the imposition of an ongoing obligation to register financial statements in New Zealand:

- the exemptions address the particular circumstances of offers made under the overseas companies securities notices, which provide exemptions only where the offer in New Zealand is ancillary to certain offers of listed securities in a specified jurisdiction, and provides relief from the ongoing financial reporting requirements triggered by the allotment of securities under those notices. Given the limited application of the exemptions, they are not broader than reasonably necessary to address the matters to which they relate.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 28 March 2013.  
This notice is administered by the Financial Markets Authority.

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