Climate Change (Unit Register) Regulations 2008

Anand Satyanand, Governor-General

Order in Council

At Wellington this 29th day of September 2008

Present:
His Excellency the Governor-General in Council

Pursuant to section 30G of the Climate Change Response Act 2002, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

Regulations

1 Title

- These regulations are the Climate Change (Unit Register) Regulations 2008.

2 Commencement

- These regulations come into force on 1 November 2008.

3 Interpretation

- In these regulations, unless the context otherwise requires,—
  account holder means a qualified person who holds, individually or jointly, a holding account
  Act means the Climate Change Response Act 2002
  crime involving dishonesty means—
  - (a) any crime specified in Part 10 of the Crimes Act 1961 other than the crimes specified in sections 267 to 272 of that Act; and
  - (b) any equivalent crime under the law of a jurisdiction other than New Zealand

  Crown holding account—
  - (a) means a holding account that is—
    - (i) held on behalf of the Crown by the direction of the Minister of Finance under section 6 of the Act; and
    - (ii) administered by the Registrar for the purposes of meeting New Zealand's obligations under the Convention or the Protocol; and
  - (b) excludes a holding account held by a government agency or Crown entity in its own right for the purposes of meeting its business or corporate objectives

  qualified person means a person—
  - (a) whose name has been entered on a register kept for the purposes of section 56 or 57 of the Act; or
  - (b) who is entitled to receive, or who has received, an allocation of New Zealand units free of charge in accordance with an allocation plan; or
  - (c) who, if an individual,—
    - (i) is 18 years of age or older; and
    - (ii) is not—
      - (A) an undischarged bankrupt; or
      - (B) subject to a property order under the Protection of Personal and Property Rights Act 1988; or
      - (C) subject to a personal order under the Protection of Personal and Property Rights Act 1988 that reflects adversely on the person's competence to manage his or her own affairs in relation to his or her property or capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care or welfare; or
      - (D) prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993; or
      - (E) a person who has been convicted of an offence under any of sections 377 to 380 of the Companies Act 1993 or a crime involving dishonesty; or

        - (F) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993; or
        - (G) a person to whom a provision that is, under the law of a jurisdiction other than New Zealand, equivalent to any of the provisions specified in subsubparagraphs (A) to (F) applies; or
  - (d) who, if not an individual,—
    - (i) is—
      - (A) a New Zealand entity established, registered, or incorporated in New Zealand in accordance with the laws of New Zealand; or
      - (B) an Australian company established, registered, or incorporated in Australia in accordance with the laws of Australia; or
      - (C) an overseas company, including an Australian company, registered in New Zealand in accordance with the Companies Act 1993; and
    - (ii) is not an entity that—
      - (A) has been, or is being, wound up; or
      - (B) is in liquidation; or
      - (C) is subject to statutory management under the Corporations (Investigation and Management) Act 1989; or
      - (D) has a director or an officer who is not qualified to open a holding account; or
      - (E) has a shareholder who holds more than a simple majority of the shares in the entity and is not qualified to open a holding account; or
      - (F) has been convicted of an offence under any of sections 377 to 380 of the Companies Act 1993 or a crime involving dishonesty; and
    - (iii) is not, under the law of a jurisdiction other than New Zealand, an entity that—
      - (A) is subject to management equivalent to statutory management under the Corporations (Investigation and Management) Act 1989; or
      - (B) has been convicted of an offence equivalent to an offence under any of sections 377 to 380 of the Companies Act 1993 or a crime involving dishonesty

Registrar means the Registrar appointed under section 11 of the Act

registry user name means a unique identifier personal to an individual and obtained via the Registry's Internet site

unit register means the register specified in section 18 of the Act.

Opening holding accounts

4 Application procedure to open holding accounts

- (1) To open a holding account, a proposed account holder must—
  - (a) be a qualified person; and
  - (b) apply to open a holding account via the Registry's Internet site.

  (2) The application procedure to open a holding account must require the proposed account holder to provide the following information:
  - (a) the proposed name for the holding account; and
  - (b) the proposed account holder's—
    - (i) full legal name; and
    - (ii) account name; and
    - (iii) physical address for service in New Zealand; and
    - (iv) postal address; and
    - (v) telephone number; and
    - (vi) email address; and

        - (vii) New Zealand registration number, if the proposed account holder is a New Zealand entity or overseas company registered in New Zealand; and
        - (viii) Australian registration number, if the proposed account holder—
            - (A) is an Australian company registered in Australia; and
            - (B) is not registered in New Zealand.

    (3) If the proposed account holder intends or is required to authorise a primary representative to operate the proposed account holder's holding account, the proposed account holder must follow the procedure set out in regulation 15.

    (4) The Registrar may not approve the opening of a holding account in the name of the proposed account holder unless the Registrar has received a declaration signed by the proposed account holder that contains a statement that—
    - (a) the proposed account holder authorises the opening of a holding account in the name of the proposed account holder; and
    - (b) the proposed account holder is a qualified person; and
    - (c) the information provided by the applicant is true and accurate.

5 Registrar may require additional information to verify particulars required under regulation 4

- The Registrar may require an applicant to provide any additional information reasonably necessary to verify any of the particulars that the applicant must provide under regulation 4 to open a holding account.

6 Holding accounts may be held jointly

- (1) Two or more persons may hold a holding account jointly if each person is a qualified person.

    (2) Persons that hold a holding account jointly are jointly and severally liable regarding any matter arising with respect to the account.

    (3) With respect to a holding account held jointly, any declaration that must be signed by an account holder under these regulations must be signed by each account holder of that holding account.

    (4) With respect to a proposed holding account to be held jointly, any declaration that must be signed by a proposed account holder under these regulations must be signed by each proposed account holder of that proposed holding account.

Transfer of units

7 Application procedure to register transactions

- (1) To transfer units, an account holder must apply to transfer units via the Registry's Internet site.

    (2) The application procedure to transfer units must require the account holder to provide the following information:
    - (a) the account number of the holding account from which units are to be transferred, cancelled, retired, surrendered, or converted; and
    - (b) if units are to be transferred to another holding account, the account number of that account; and
    - (c) if a transaction is a transfer that involves an overseas holding account, the particulars of the account and the name of the country where that account is held; and
    - (d) the quantity and type of units to be transferred, cancelled, retired, surrendered, or converted; and
    - (e) an indication as to whether the units are to be transferred, cancelled, retired, surrendered, or converted.

Restrictions on certain transactions

8 Temporary certified emission reduction units

- An account holder may not transfer temporary certified emission reduction units from a holding account to a surrender account.

9 Long-term certified emission reduction units

- (1) No account holder, other than an account holder of a Crown holding account, may hold long-term certified emission reduction units.

(2) No person, other than the Registrar as administrator of a Crown holding account, may transfer long-term certified emission reduction units into or within the unit register.

10 Nuclear energy

- (1) No account holder may hold any units arising from—
  - (a) joint implementation projects that involve nuclear energy; or
  - (b) clean development mechanism projects that involve nuclear energy.

  (2) If the Registrar is satisfied that units in respect of nuclear energy are registered or otherwise recorded in the unit register, then—
  - (a) the Registrar must serve notice on the account holder that—
    - (i) the units must be transferred out of New Zealand within 30 days after the day on which the notice is served on the account holder; and
    - (ii) the Registrar will cancel any of the units that are not transferred out of New Zealand within the period specified in subparagraph (i); and
  - (b) the account holder must transfer the units out of New Zealand within 30 days after the day on which the notice is served on the account holder; and
  - (c) the Registrar must not register any transfer of the units from the account holder's holding account to any other holding account in the unit register; and
  - (d) if the units are not transferred out of New Zealand within 30 days after the day on which the notice is served on the account holder, the Registrar must cancel those units.

  (3) If units in respect of nuclear energy have been transferred to a surrender account or a cancellation account,—
  - (a) the Registrar must—
    - (i) reverse the transfer; and
    - (ii) notify the relevant account holder that the transfer has been reversed; and
    - (iii) for the purposes of surrendering or cancelling units, treat the transfer as if it had never taken place; and
  - (b) the Registrar and the relevant account holder must comply with subclause (2).

11 New Zealand units may only be transferred to certain overseas registries

- New Zealand units may not be transferred from the unit register to an overseas registry unless the overseas registry is a registry prescribed in regulations made under the Act.

Closing holding accounts

12 Application procedure to close holding accounts

- (1) To close a holding account, an account holder must lodge a request to close the holding account via the Registry's Internet site.

  (2) The request to close a holding account must provide the following information:
  - (a) the name of the holding account; and
  - (b) the account number.

  (3) The Registrar may not close a holding account unless the Registrar has received a declaration signed by the account holder that contains a statement that the account holder authorises the closing of the holding account.

13 Holding accounts with units may be closed only if chief executive directs Registrar to close them

- A holding account with units in it may be closed only if the chief executive responsible for Part 2 of the Act directs the Registrar to close it.

Primary representatives

14 Qualifications to be primary representative

- To be a primary representative, a person must be—
  - (a) a qualified person who is an individual; and
  - (b) authorised by the account holder to operate the holding account on the account holder's behalf.

15 Appointment of primary representatives

- (1) An account holder or proposed account holder—
  - (a) who is an individual—

        - (i) may appoint at least 1 but no more than 3 primary representatives (including the account holder if the account holder elects to operate the holding account) to operate the holding account on the account holder's behalf; but
        - (ii) must, at all times, have at least 1 person who is authorised to operate the account holder's account (which person may be either the holding account holder or a primary representative):
    - (b) that is not an individual must appoint at least 1 but no more than 3 primary representatives to operate the holding account on the account holder's behalf.

  (2) An account holder or a proposed account holder may appoint a primary representative by submitting a request to appoint a primary representative via the Registry's Internet site.
  (3) For the purposes of subclause (2), the account holder or proposed account holder must provide the following information:
    - (a) the name of the holding account; and
    - (b) the account number (if any); and
    - (c) the primary representative's—
        - (i) full legal name; and
        - (ii) registry user name; and
        - (iii) physical address for service in New Zealand; and
        - (iv) postal address; and
        - (v) telephone number; and
        - (vi) email address; and
        - (vii) if there are already 3 primary representatives in respect of the account holder's holding account, the full legal name and registry user name of the primary representative who is to be replaced.

  (4) The Registrar may not register the appointment of a primary representative unless the Registrar has received a declaration signed by the account holder or the proposed account holder that contains a statement that—
    - (a) the person identified in the request as the primary representative—
        - (i) has been appointed by the account holder or the proposed account holder; and
        - (ii) is an individual and a qualified person; and
        - (iii) is authorised to operate the holding account on behalf of the account holder or proposed account holder; and
    - (b) the information provided by the account holder or proposed account holder is true and accurate.

  (5) The acts of a primary representative via the Registry's Internet site with respect to the operation of an account holder's holding account and the recording of possession are binding on the account holder.
  (6) To avoid doubt, a primary representative may not make a declaration required under these regulations.

16 Registrar may require additional information to verify particulars required under regulation 15

- The Registrar may require an account holder or proposed account holder to provide any additional information reasonably necessary to verify any of the particulars that the account holder or proposed account holder must provide under regulation 15 to appoint a primary representative.

17 Removal of primary representatives

- (1) Subject to regulation 15(1), an account holder may remove a primary representative by submitting a request to remove the primary representative via the Registry's Internet site.
  (2) For the purposes of subclause (1), the account holder must provide the following information:
    - (a) the name of the holding account; and
    - (b) the account number; and
    - (c) the primary representative's full legal name and registry user name.

(3) The Registrar may not register the removal of a primary representative unless the Registrar has received a declaration signed by the account holder that contains a statement confirming that the account holder authorises the removal of the primary representative identified in the removal request.

Possession of units for purposes of Personal Property Securities Act 1999

18 Registration of certain rights

- (1) The Registrar must, for the purposes of the Personal Property Securities Act 1999, record the full legal name of the person who is in possession of units in an account holder's holding account.
  (2) A third party may submit a request to record the third party's name as the person who is in possession of units in an account holder's holding account via the Registry's Internet site.
  (3) For the purposes of subclause (2), the third party must provide the following information:
    - (a) the name of the holding account; and
    - (b) the account number; and
    - (c) the third party's—
      - (i) full legal name; and
      - (ii) registry user name or, if the third party does not have a registry user name, the full legal name and registry user name of the third party's representative; and
      - (iii) physical address for service in New Zealand; and
      - (iv) postal address; and
      - (v) telephone number; and
      - (vi) email address.

  (4) Before the Registrar may record the third party's name as a person in possession of units in an account holder's holding account, the account holder must consent to the recording of the third party's name.
  (5) The account holder may consent to the recording of the third party's name via the Registry's Internet site by confirming the third party's—
    - (a) full legal name; and
    - (b) registry user name or, if the third party does not have a registry user name, the full legal name and registry user name of the third party's representative.

  (6) If the third party's name is recorded, the Registrar must send an email to the third party and to the account holder that gives notice of the record.
  (7) If the name of a third party is recorded by way of a request made under this regulation, the Registrar may not remove the name without the consent of that third party.
  (8) If a name of a third party is not recorded by way of a request under this regulation, the Registrar must, for the purposes of the Personal Property Securities Act 1999, record the account holder as the person in possession of the units in the account holder's holding account.

19 Effect of registration of rights

- (1) If a third party's name is recorded under regulation 18,—
    - (a) the third party or the third party's representative, as the case may be, may access the account holder's holding account to view the account balance; and
    - (b) the account holder may not, without the consent of the third party, transfer units out of the holding account.

  (2) To avoid doubt, the third party whose name is recorded under regulation 18 may not use the holding account for the purposes of making a transaction.

Updating or correcting information

20 Changes in relation to information provided

- (1) This regulation applies if a change in circumstances renders any information provided under these regulations inaccurate.
  (2) If this regulation applies, the account holder must, within 10 working days of the change in circumstances, correct the relevant information via the Registry's Internet site.

21 Changes in relation to status as qualified person

- (1) If an account holder is no longer a qualified person, the account holder must apply to close the holding account.

  (2) If a primary representative is no longer a qualified person, the account holder must,—
    - (a) in the case of an account holder who is an individual, remove or change the primary representative; and
    - (b) in the case of an account holder that is not an individual, change the primary representative.

22 Revocation

- The Climate Change (Unit Register) Regulations 2007 (SR 2007/335) are revoked.

23 Transitional provisions

- (1) Despite regulation 22,—
    - (a) a holding account opened under the Climate Change (Unit Register) Regulations 2007 is to be treated as a holding account opened under these regulations; and
    - (b) a person who became an account holder under the Climate Change (Unit Register) Regulations 2007 is to be treated as having become an account holder under these regulations; and
    - (c) a representative appointed under the Climate Change (Unit Register) Regulations 2007 is to be treated as a primary representative appointed under these regulations.

  (2) The Registrar may require any person who became an account holder or was appointed as a representative under the Climate Change (Unit Register) Regulations 2007 to provide any particulars or information required to comply fully with the requirements of these regulations.

  (3) A person who is to provide any particulars or information under subclause (2) must provide the particulars or information within 90 days of the date on which the Registrar notifies the person that the person is required to provide the particulars or information.

  (4) To avoid doubt, these regulations replace the Climate Change (Unit Register) Regulations 2007 (SR 2007/335).

Rebecca Kitteridge,
Clerk of the Executive Council.

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These regulations are administered by the Ministry of Economic Development.