
Leases Restrictions (Amendment) Regulations 2006

COOK ISLANDS

LEASES RESTRICTIONS (AMENDMENT) REGULATIONS 2006

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga this 1st day of February 2006

Present:

**HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL**

PURSUANT to section 13 of the Leases Restrictions Act 1976 as amended by the Leases Restrictions Amendment Act 2005, His Excellency the Queen's Representative acting by and with the advice and consent of the Executive Council hereby makes the following regulations.

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2. Interpretation
3. New heading inserted

"PART 1 PROCEDURE"

4. New heading inserted

"PART 2 CRITERIA TO BE APPLIED BY THE TRIBUNAL"

5. New regulations added -
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 18. Restrictions against alienation of land to certain persons
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REGULATIONS

1. Title and commencement - (1) These regulations may be cited as the Leases Restrictions (Amendment) Regulations 2006 and shall be read together with and deemed part of the Leases Restrictions Regulations 1977 ("the principal Regulations").

(2) These regulations shall come into force on the day that they are assented to by the Queen's Representative except that in relation to leases pursuant to the Unit Titles Act 2005 these regulations shall be deemed to have come into force on 14 October 2005.

2. Interpretation - (1) In these Regulations unless the context otherwise requires-

"Act" means the Leases Restrictions Act 1976;

"assembled owners" means with respect to any owners in the land assembled together in a meeting called and held in accordance with these Regulations;

"common property" means common property as defined in section 2 of the Unit Titles Act 2005;

"Development Investment Board" means the Development Investment Board created pursuant to section 5 of the Development Investment Act 1995-96;

"enterprise" means any person carrying on any activity as defined in the Development Investment Act 1995-96 or proposing to carry on business;

"foreign enterprise" means-

- (a) In the case of an enterprise that is a body corporate, an enterprise—
(i) in which one third of the voting shares or power is held or controlled by persons who are not Cook Islanders; or
(ii) in which one third or more of the value or number of the shares are beneficially owned or controlled by persons who are not Cook Islanders; or
(iii) that does not have its central management or control in the Cook Islands:
(b) In the case of an enterprise other than a body corporate, an enterprise—
(i) in which one third or more of the members or partners are not Cook Islanders; or
(ii) in which one third or more of the beneficial ownership of which is owned by persons who are not Cook Islanders;
“owner” in relation to any area of land means the persons who are beneficially entitled to that land in fee simple as tenants in common whether legal or equitable and includes but not to the exclusion of the persons entitled in remainder, the owner of a beneficial freehold interest for life or any other beneficial freehold interest less than the fee simple in any land or in any interest therein and “owners” has a corresponding meaning;
“permanent resident” means a permanent resident pursuant to section 5 of the Entry, Residence and Departure Act 1971-72;
“unit plan” means a unit plan pursuant to the Unit Titles Act 2005;
“Registrar” means the Registrar of the High Court of the Cook Islands.

3. New heading inserted - The principal regulations are hereby amended by inserting after regulation 2 and before regulation 3 the heading-

**“PART 1
PROCEDURE”**

4. New heading inserted - The principal regulations are hereby amended by inserting after regulation 16 the new heading-

**“PART 2
CRITERIA TO BE APPLIED BY THE TRIBUNAL”**

5. New regulations inserted - The principal regulations are hereby amended by inserting after regulation 16 and before regulation 18 the following new regulations-

“17. Criteria to be applied by the Tribunal-(1) Before the Tribunal makes a decision on any application for approval of a lease, sublease, assignment of lease or assignment of sublease it shall apply the criteria set out in these Regulations.

18. Restrictions against alienation of land to certain persons - The Tribunal shall not approve any lease or sublease or assignment by will or otherwise of any lease or assignment by will or otherwise of any sublease to:

- (a) A person who is not a Cook Islander; or
(b) A person who is not a permanent resident.

19. Approval may be given in certain cases - The Tribunal may grant approval to any lease or sublease or assignment of lease or assignment of sublease to:

- (a) Any person who is not a Cook Islander if that person is the spouse of a Cook Islander; and

- (b) The Cook Islander spouse is joint owner in the deed for the transaction sought to be approved by the Tribunal; and
- (c) Express provision is made in the deed document for the transaction that in the event of the Cook Islander spouse predeceasing the non-Cook Islander spouse the approval of the Lessors under the head lease shall be obtained for the non-Cook Islander's interest for the unexpired term of the leasehold interest to continue and where such deceased Cook Islander spouse and such surviving non-Cook Islander spouse have together issue surviving then such issue shall become co-owners of the leasehold interest with the non-Cook Islander spouse until the expiry of the lease; or
- (d) Any person who is not a Cook Islander if the High Court or Court of Appeal so orders; or
- (e) Any Company whose memorandum or articles are registered in the Cook Islands pursuant to section 26 of the Companies Act 1970-71 if-
 - (i) not less than 55% of the shareholding in the Company or not less than 51% of the controlling interest in the company is held by one or more Cook Islanders or permanent residents; and
 - (ii) provision is made that no transfer shall be made of the local shareholding during the period of five (5) years from the date of approval of the Tribunal; and
 - (iii) approval is not being sought for residential purposes; or
- (f) Any enterprise or foreign enterprise registered in the Cook Islands pursuant to the provisions of the Development Investment Act 1995-96 if-
 - (i) a certificate has been issued by the Development Investment Board pursuant to section 19 of the Development Investment Act 1995-96 and given to the Tribunal certifying that the enterprise or foreign enterprise has been registered under that Act; and
 - (ii) provision is made that no transfer shall be made of the local shareholding during the period of five (5) years from the date of approval of the Tribunal; and
 - (iii) approval is not being sought for residential purposes.

20. Requirement for Certificate of explanation in Cook Islands Maori - The Tribunal shall not approve any lease or sublease or assignment of lease or assignment of sublease where one of the parties to the transaction is a Cook Islander unless the Tribunal is satisfied that-

- (a) The nature and extent of the transaction and the implication of, the provisions of the deed document for the transaction has been explained to that Cook Islander in the Cook Islands Maori language by an officer of the High Court approved in writing by the Secretary of Justice or the Registrar to be competent for the purpose; and
- (b) An appropriate certificate duly signed to that effect by the person who carried out the explanation has been endorsed on the document; and
- (c) The person to whom the explanation in Cook Islands Maori has been given was not held responsible for the cost of providing that explanation but that cost is met by the party or their representative who requires the transaction to be recorded in English; and
- (d) The alienation complies with the provisions of section 475 of the Cook Islands Act 1915.

21. Approval dependent upon holding of meeting of assembled owners - The Tribunal shall not approve any sublease or assignment of lease or assignment of sublease unless it is satisfied upon written evidence being produced by the applicant certifying that a meeting of assembled owners resident on the island on which the land is situated has been held and that the assembled owners have by consensus consented to the transaction.

22. Application to be reconsidered or adjourned if opposed by owner-Where any of the owners in the land concerned opposes the transaction the Tribunal shall not approve any lease or sublease or assignment of lease or assignment of sublease except that the Tribunal may-

- (a) Reconsider the application if the Tribunal deems the objection to be valid and reasonable;
- or

(b) Adjourn the application upon such conditions as the Tribunal may impose to allow the opposition to the application to be disposed of or settled between the parties.

23. Alienation complies with Cook Islands Act 1915 - The Tribunal shall not approve any lease, sublease or assignment of lease or assignment of sublease unless the Tribunal is satisfied upon the provision by direction or otherwise of such relevant information as may assist the Tribunal, that-

(a) The mode of execution of the instrument of alienation is in conformity with the Cook Islands Act 1915;

(b) The alienation is not contrary to equity or good faith or to the interests of the persons alienating or to the public interest;

24. Monetary consideration, annual rental - The Tribunal shall not approve any lease, sublease or assignment of lease or assignment of sublease unless the Tribunal is satisfied upon the provision by direction or otherwise of such relevant information as may assist the Tribunal, that-

(a) Any monetary consideration paid and annual rental payable to the owners in the land are adequate fair and reasonable and comply with section 482 of the Cook Islands Act 1915; or

(b) In the case of an enterprise or foreign enterprise the monetary consideration paid and annual rental payable to the owners in the land complies with section 106A of the Property Law Act 1952 as it applies in the Cook Islands.

25. Owners or Cook Islanders to be given first right of refusal in lease - The Tribunal shall not approve any sublease or assignment of lease or assignment of sublease unless the deed for the transaction expressly provides for-

(a) the owners in the land residing on the island on which the land is situated to be given first notice of any intended assignment or subletting and first option to purchase or refuse to purchase such assignment or subletting and the Tribunal is satisfied that such provision is reasonable; or

(b) a Cook Islander residing in the Cook Islands to be given first right of refusal where there are no owners in the land residing on the island on which the land is situated willing to purchase such assignment or subletting and the Tribunal is satisfied that the lessee has made reasonable attempts to give notice of the intended assignment or subletting and the Tribunal is satisfied that such provision is reasonable.

26. Specific purposes to be stated in the lease - The Tribunal shall not approve any lease, sublease or assignment of lease or assignment of sublease unless the purpose for the lease, sublease, assignment of lease or assignment of sublease is explicitly stated in the deed of lease and the Tribunal shall refuse approval if the purpose is vague or too general or is not specific.

27. Approval to be refused if land required for family needs - The Tribunal shall not approve any lease, sublease or assignment of lease or assignment of sublease if the Tribunal is satisfied upon the provision by direction or otherwise of such relevant information as may assist the Tribunal, that within five years of the date of application the land would be required for the needs of the owners in the land and their families.

28. Breach of condition in head lease may bar approval - The Tribunal shall not approve any lease, sublease or assignment of lease or assignment of sublease if there is or has been a breach by the lessee of any of the conditions under the head lease unless proof is produced to the Tribunal that the breach has been made good.

29. Approval of mortgage - The Tribunal may approve the mortgage over any leasehold land if the Tribunal is satisfied that:

(a) The mortgagor understands the nature and extent of the mortgage transaction and in the case of a mortgagor who is a Cook Islander the implication of the provisions of the mortgage document have been explained to that mortgagor in the Cook Islands Maori language by an

officer of the High Court approved in writing by the Secretary of Justice or the Registrar to be competent for the purpose; and

(b) An appropriate certificate duly signed to that effect by the person who carried out the explanation has been endorsed on the document; and

(c) The person to whom the explanation in Cook Islands Maori has been given was not held responsible for the cost of providing that explanation but that cost is met by the party or their representative who requires the mortgage document to be recorded in English; and

(d) The mortgagor has the ability to fulfil the obligations imposed under the mortgage and that the terms and conditions of the mortgage are not onerous and are fair and reasonable on the mortgagor.

30. Approval may be refused unless final document executed Parties - The Tribunal may not approve any lease or sublease or assignment of lease or assignment of sublease unless the original and final deed or document for the transaction has been duly signed and/or executed by one of the parties thereto and produced to the Tribunal.

31. Confirmation by the Land Court required - No signed or executed lease or sublease or assignment of lease or assignment of sublease pursuant to regulation 30 of these Regulations shall have any force or effect unless it is confirmed by the Land Court pursuant to section 477 of the Cook Islands Act 1915.

32. Approval to be granted pursuant to Registrar's sale - The Tribunal shall approve the assignment of any lease if such assignment is being made pursuant to a Registrar's sale and providing such assignment complies with the Leases Restrictions Act 1976 and the Leases Restrictions Regulations 1977.

33. No approval for assignment or sublease before 10 years of term of lease - The Tribunal shall not approve any sublease or assignment of any lease unless 10 years from the date of commencement of the lease or sublease has expired except that the Tribunal may approve any sublease or assignment of any lease before the expiry of 10 years from the date of commencement of the lease or sublease when-

(a) The consent of the owners residing on the island on which the land is located and to which the application relates has been given; or

(b) The Tribunal is satisfied that there are sufficient reasons for such approval to be given.

34. Right of person to be heard - Any person who has any interest in the land that is the subject matter of the application before the Tribunal may, upon verbal or written application being made to the Tribunal, be heard by the Tribunal in respect of the application, and the Tribunal may, after hearing such person and the parties to the application, either adjourn the application upon such conditions as the Tribunal may decide to impose or dismiss the application.

35. Tribunal may request further information - In giving effect to any of the provisions of these Regulations the Tribunal may direct the applicant to produce to the Tribunal such information as may be necessary to enable the Tribunal to make a final decision.

36. Tribunal may hold sittings in any of the islands of the Cook Islands - The Tribunal may hold sittings in any island of the Cook Islands where the lands affected by the applications before the Tribunal are situated.

37. Approval pursuant to the Unit Titles Act 2005 - Where an application has been made for the approval of the Tribunal in relation to a lease or sublease or assignment of lease or assignment of sublease under the Unit Titles Act 2005 the Tribunal shall apply the criteria set out in these Regulations and in paragraphs (a) to (f) of this regulation-

(a) the owners in the land understand the nature and extent of the development;

(b) the terms of the lease have been complied with;

(c) the lease expressly states the development is pursuant to the Unit Titles Act 2005;

(d) existing traditional easements across the land have been clearly marked on a unit plan pursuant to the Unit Titles Act 2005;

(e) the common property has been clearly marked on any plan and in relation to common property which is vacant land, the intended use of that vacant land has been properly recorded;

(f) the provisions of the Cook Islands Act 1915 have been complied with; and

(g) the provisions of section 106A of the Property Law Act 1952 as it applies in the Cook Islands have been complied with.

38. No right of renewal - The Tribunal shall not approve any lease, sublease, assignment of lease or assignment of sublease in which there is a clause giving the lessee or sub-lessee as the case may be a right to renew the term of the lease, unless the owners in the land have considered that clause and the Tribunal is satisfied that:

(a) The nature and extent of the clause has been explained to those owners in the land in the Cook Islands Maori language by an officer of the High Court approved in writing by the Secretary of Justice or the Registrar to be competent for the purpose; and

(b) An appropriate certificate duly signed to that effect by the person who carried out the explanation has been endorsed on the document; and

(c) The person or persons to whom the explanation in Cook Islands Maori has been given was not held responsible for the cost of providing that explanation but that cost is met by the party or their representative who requires the clause to be recorded in English.

39. Removal of improvements at expire of lease - The Tribunal shall not approve any lease, sublease, assignment of lease or assignment of sublease in which there is a clause unless those improvements are stated in the clause to be chattels or tenants fixtures in giving the lessee the right to remove improvements to the land at the expiry of the lease accordance with the common law and the owners in the land have considered that clause and the Tribunal is satisfied that:

(a) The nature and extent of the clause has been explained to those owners in the land in the Cook Islands Maori language by an officer of the High Court approved in writing by the Secretary of Justice or the Registrar to be competent for the purpose; and

(b) An appropriate certificate duly signed to that effect by the person who carried out the explanation has been endorsed on the document; and

(c) The person or persons to whom the explanation in Cook Islands Maori has been given was not held responsible for the cost of providing that explanation but that cost is met by the party or their representative who requires the clause to be recorded in English.

40. Improvements to be left in good state of repair -The Tribunal shall not approve any lease, sublease, assignment of lease or assignment of sublease unless there is a clause requiring that at the expiry of the lease or sublease the lessee shall repair and make good at its own expense any damage which may be done to the land and shall leave at its own expense any improvements in a good state of repair.

6. Revocation -Regulation 18 of the principal regulations is hereby revoked.

7. Savings - Nothing in these Regulations shall affect leases, subleases or assignment of leases or assignment of subleases which have been approved by the Tribunal before the coming into force of these Regulations.

8. Amendment to Schedule 1 - Schedule 1 of the principal Regulations is hereby amended by inserting after the word “I,” and immediately before the words “hereby make” the words “a Registered Company/ Registered Foreign Enterprise”.

This Act is administered in the Ministry of Justice

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