



## THE TOKELAU BUSINESS RESTRICTION REGULATIONS 1989

PAUL REEVES, Governor-General

### ORDER IN COUNCIL

At Wellington this 18th day of September 1989

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Tokelau Act 1948, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

#### ANALYSIS

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#### REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Tokelau Business Restriction Regulations 1989.

(2) These regulations shall come into force on the 1st day of November 1989.

**2. Interpretation**—In these regulations, unless the context otherwise requires,—

“Administrator” means the Administrator of Tokelau:

“Approval” means an approval granted under regulation 5 of these regulations to carry on business in Tokelau as a bank or a moneylender or an insurer:

“Bank” means any person who carries on the business of banking, and includes any person who carries on any business in the normal course of which that person pays cheques drawn by and collects cheques paid in by that person’s customers:

“Cash price”, in relation to property sold or bailed or services provided under a contract, means—

(i) The lowest price at which a person could have purchased that property or those services from the vendor, bailor, or provider thereof on the basis of payment in full at the time the contract was made; or

(ii) If there is no such price, the fair market value of that property or those services at the time the contract was made:

“Moneylender”—

(i) Means any person carrying on any business in the course of which and for the purposes of which that person lends money; and

(ii) Includes a pawnbroker; and

(iii) Also includes a person who in the course of that person’s business enters into any contract under which that person sells or agrees to sell property or provides or agrees to provide services (whether or not possession of the property is given, or the services are provided, before all money payable under the contract has been paid) in consideration of a promise by another person to pay, or to procure the payment of, in the future and in respect of the sale or provision, a sum or sums of money exceeding in aggregate the cash price of the property or services; and

(iv) Also includes a person who in the course of that person’s business enters into any contract under which that person bails or agrees to bail goods (whether or not with an option to purchase) in consideration of a promise by another person to pay, or to procure the payment of, in the future and in respect of the bailment or option, a sum or sums of money exceeding in aggregate the cash price of the goods; but

(v) Does not include any person bona fide carrying on the business of banking or insurance:

“Pawnbroker” means a person carrying on business by advancing on interest, or for or in expectation of profit, gain, or reward, any sum of money on security (whether collateral or otherwise) of any article taken by such person by way of pawn, pledge, or security.

**3. Businesses of banking, moneylending, and insurance not to be carried on in Tokelau without approval of Administrator**—Subject to these regulations, no person shall carry on business in Tokelau as a bank or a moneylender or an insurer unless there is in force in respect of the carrying on by that person of that business an approval granted by the Administrator.

**4. Application for approval to carry on business in Tokelau**—  
(1) Any person who wishes to carry on business in Tokelau as a bank or a

moneylender or an insurer may apply to the Administrator for approval to carry on such business.

(2) Every application for approval made under subclause (1) of this regulation shall be made in such manner as the Administrator may specify, either generally or in any particular case, and shall be accompanied by such information as the Administrator may reasonably require, either generally or in any particular case, in order to determine whether to grant that approval.

**5. Administrator to consider application**—(1) Subject to this regulation, where any application for approval is made pursuant to regulation 4 (1) of these regulations, the Administrator shall consider the application and may, in the Administrator's discretion, grant that approval or refuse to grant that approval.

(2) The Administrator shall not grant any approval to carry on any business pursuant to subclause (1) of this regulation unless the Administrator is satisfied—

- (i) That the business will be carried on with integrity and prudence and with those professional skills that are consistent with the range and scale of the activities that the business proposes to offer; and
- (ii) That the assets of the business, together with any other financial resources available to the business, are of an amount that is commensurate with the scale of the business's operations.

(3) Any approval granted under subclause (1) of this regulation may be granted subject to such conditions as are specified in the approval.

(4) Where any approval is granted under subclause (1) of this regulation subject to conditions, the Administrator may, from time to time, vary or revoke any of those conditions or impose additional conditions.

(5) Where the Administrator refuses to grant an approval under subclause (1) of this regulation, the Administrator shall give notice in writing to the applicant of that decision, and of the reasons for it.

**6. Duration of approval**—Every approval granted to any person under regulation 5 of these regulations shall remain in force until—

- (i) It is surrendered by notice in writing given by that person to the Administrator; or
- (ii) It is revoked in accordance with regulation 7 of these regulations.

**7. Administrator may revoke approval**—Where it appears to the Administrator that any person who has been granted an approval under regulation 5 of these regulations to carry on any business—

- (i) Has supplied information in connection with that person's application for approval that is false or misleading in a material particular; or
- (ii) Has not carried on that business within the period of 12 months beginning on the date on which that approval was granted or has ceased to carry on such business for a period of more than 6 months; or
- (iii) Is not carrying on that business with integrity and prudence and with the professional skills that are consistent with the range and scale of that business's activities; or
- (iv) Is carrying on that business with assets which, together with any other financial resources available to the business, are not of an amount that is commensurate with the scale of the business's operations; or

- (v) Has failed to comply with any condition imposed in respect of that approval under subclause (3) or subclause (4) of regulation 5 of these regulations; or
- (vi) Has in any other way so conducted that person's affairs as to threaten the interests of the customers or creditors of that business,—

the Administrator may, by notice in writing given to the person concerned, revoke that person's approval to carry on that business.

**8. Publication of decisions**—(1) Where—

(i) Any approval is granted under regulation 5 of these regulations; or  
 (ii) Any approval is revoked under regulation 7 of these regulations,—  
 the Administrator shall cause the details of that decision to be printed in Tokelauan and in English in the first available issue of *Te Vakai* published after that decision is made.

(2) The details published pursuant to subclause (1) of this regulation in respect of the grant of any approval shall include—

- (i) The name of the person to whom the approval is granted; and
- (ii) The type of business in respect of which the approval is granted.

**9. Offences**—Subject to regulation 10 of these regulations, every person commits an offence and is liable on conviction to a fine not exceeding \$500 who—

- (i) Carries on any business in Tokelau in contravention of regulation 3 of these regulations; or
- (ii) Fails to comply with any condition imposed pursuant to subclause (3) or subclause (4) of regulation 5 of these regulations on any approval granted to that person; or
- (iii) Furnishes any information that to that person's knowledge is false or misleading in a material particular in connection with an application for approval under regulation 4 of these regulations.

**10. Transitional provision**—Where, on the commencement of these regulations, any person is carrying on business in Tokelau as a bank or a moneylender or an insurer, nothing in regulation 3 of these regulations shall apply in respect of the carrying on by that person of that business—

- (i) For the period of 6 months beginning on the date of the commencement of these regulations; nor
- (ii) If, before the expiration of that period, that person makes an application for approval under regulation 4 of these regulations to carry on that business, until that approval is granted or refused, or that application is withdrawn.

C. J. HILL,  
for Clerk of the Executive Council.

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## EXPLANATORY NOTE

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 November 1989, restrict the carrying on in Tokelau of the businesses of banking, moneylending, and insurance.

The approval of the Administrator of Tokelau will be required before any person is permitted to carry on any such business, and the Administrator must be satisfied of the financial soundness of the business before granting an approval.

Any approval may be granted subject to conditions, and provision is also made for the revocation of an approval on certain grounds.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 22 September 1989.

These regulations are administered in the Ministry of External Relations and Trade.