

BUSINESS RESTRICTION RULES 1989

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1 Name

These are the Business Restriction Rules 1989.

2 Interpretation

In these Rules —

“approval” means an approval granted under rule 5 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 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 indicates 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 Banking, money lending, and insurance without approval

Subject to these Rules, 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 Council for the Ongoing Government.

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 Council for the Ongoing Government for approval to carry on such business.

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

5 Council for the Ongoing Government to consider application

- (1) Subject to this rule, where any application for approval is made pursuant to rule 4(1), the Council for the Ongoing Government shall consider the application and may grant that approval or refuse to grant that approval.
- (2) The Council for the Ongoing Government shall not grant any approval to carry on any business pursuant to paragraph (1) unless the Council for the Ongoing Government 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 paragraph (1) may be granted subject to such conditions as are specified in the approval.
- (4) Where any approval is granted under paragraph (1) subject to conditions, the Council for the Ongoing Government may vary or revoke any of those conditions or impose additional conditions.
- (5) Where the Council for the Ongoing Government refuses to grant an approval under paragraph (1), the Council for the Ongoing Government 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 rule 5 shall remain in force until —

- (i) it is surrendered by notice in writing given by that person to the Council for the Ongoing Government; or
- (ii) it is revoked in accordance with rule 7.

7 Council for the Ongoing Government may revoke approval

Where it appears to the Council for the Ongoing Government that any person who has been granted an approval under rule 5 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 rule 5(3) or (4); 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 Council for the Ongoing Government 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 rule 5; or
 - (ii) any approval is revoked under rule 7,the Council for the Ongoing Government shall cause the details of that decision to be printed in Tokelauan and in English and public notification given of it.
- (2) The details published pursuant to paragraph (1) 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

Every person commits an offence and is liable on conviction to a fine not exceeding 10 penalty units who —

- (i) carries on any business in Tokelau in contravention of rule 3; or
- (ii) fails to comply with any condition imposed pursuant to rule 5(3) or (4) on any approval granted to that person; or

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- (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 rule 4.

10 Transitional provision

[Spent]
