

DEVELOPMENT INVESTMENT REGULATIONS 1996

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua this day of

1996

Present:

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

PURSUANT to section 41 of the Development Investment Act 1995-96, His Excellency the Queen's Representative acting by and with the consent of the Executive Council hereby makes the following Regulations:

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REGULATIONS

1. Title and commencement - (1) These Regulations may be cited as the Development Investment Regulations 1996.

(2) These Regulations shall come into force on the day of 1996.

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2. Interpretation - In these Regulations -

- (a) "Act" means the Development Investment Act 1995-96;
- (b) expressions used in these regulations shall, unless the contrary intention appears, have the same meanings as in the Act.

PART I **APPLICATIONS**

3. Applications for registration as foreign enterprise - Every application to the Board for registration as a foreign enterprise shall contain the following information -

- (a) the nature of the enterprise, and the product or service to be provided, in sufficient detail to present a clear description of the proposed activity;
- (b) the market potential for the product or service;
- (c) any distinctive features of the activity including innovations, new processes or product, new skills and technology;
- (d) the legal and beneficial shareholding and the names and addresses and passport numbers of all the legal and beneficial shareholders of the enterprise together with the same details of directors, key management and expatriate personnel;
- (e) the source of financing of the enterprise;
- (f) the locality of the enterprise and the title to the site held or expected to be obtained;
- (g) the number of persons to be employed including numbers of expatriate personnel, and the provision for the training of Cook Islanders where expatriate personnel are initially to be employed;
- (h) the nature and source of raw materials and other inputs to be used differentiating between local and imported items;
- (i) details of proposed capital expenditure;
- (j) the dates on which the enterprise will commence its establishment and on which it will commence business in the Cook Islands;
- (k) a financial forecast of the enterprise or activity for up to 10 years which highlights, wherever it is applicable, the following

information:

- (i) capital investment and borrowing from overseas and within the Cook Islands;
- (ii) anticipated export earnings;
- (iii) the value to the Cook Islands by way of import substitution;
- (iv) taxes and revenues expected to be generated for the Cook Islands;
- (v) cost of capital goods and items to be imported, including other foreign costs to be incurred in the establishment of the project;
- (vi) the foreign component of operating costs attributable to the direct importation of materials and supplies;

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- (vii) debt servicing on any foreign loans or debts;
- (viii) cost of any expatriate labour employed;
- (ix) profit accruals (dividends or undistributed profits) due to any foreign person, and shall be accompanied by the fee set out in the First Schedule.

4. Application for incentives and concessions - Every application to the Board for the grant of incentives or concessions, shall, unless it has at the same time been provided in connection with an application for registration of the applicant as a foreign enterprise, contain the following -

- (a) the nature of the enterprise, and the product or service to be provided, in sufficient detail to present a clear description of the proposed activity;
- (b) the market potential for the product or service;
- (c) any distinctive features of the activity, including innovations, new processes or product, new skills and technology;
- (d) the legal and beneficial shareholding and the names and addresses of all the legal and beneficial shareholders of the enterprise together with the same details of directors, key management and expatriate personnel;
- (e) the source of financing of the enterprise;
- (f) the locality of the enterprise and the title to the site held or expected to be obtained;
- (g) the number of persons to be employed including details of expatriate personnel and the justification for the same, and the provision for the training of Cook Islanders where expatriate personnel are initially to be employed;
- (h) the nature and source of raw materials and other inputs to be used

- differentiating between local and imported items;
- (i) details of proposed capital expenditure;
- (j) the dates on which the enterprise will commence its establishment and on which it will commence business in the Cook Islands;
- (k) a financial forecast of the enterprise or activity for up to 10 years which highlights, wherever it is applicable, the following information:
 - (i) capital investment and borrowing from overseas and within the Cook Islands;
 - (ii) export earnings;
 - (iii) the value to the Cook Islands by way of import substitution;
 - (iv) taxes and revenues expected to be generated for the Cook Islands;
 - (v) cost of capital goods and items to be imported, including other foreign costs to be incurred in the establishment of the project;
 - (vi) the foreign component of operating costs attributable to the direct importation of materials and supplies;
 - (vii) debt servicing on any foreign loans or debts;
 - (viii) cost of any expatriate labour employed;
 - (ix) profit accruals (dividends or undistributed profits) due to any foreign person, and shall be accompanied by the fee set out in the First Schedule.

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5. Consideration of Applications - The Directors shall consider every application made to the Board pursuant to the Act and after giving due consideration thereto in accordance with its functions and taking into account the criteria set out in the Act and in the Investment Code and may either -

- (a) approve the application with or without such terms and conditions as the board may in its discretion impose; or
- (b) decline the application.

(6) The board may adjourn any application from time to time.

(7) Every approval granted pursuant to this section shall lapse and be of no effect if the foreign enterprise to whom the approval has been granted in respect of an activity has not commenced carrying on business in that activity within one year or such extended time as the Directors may allow.

(8) Every person who for the purpose of obtaining for himself or any other person registration of an enterprise or any activity pursuant to this Act, makes a false or misleading statement in any material particular or supplies any false or misleading information in any material particular commits an offence and shall be liable on conviction to a fine not exceeding \$5,000.

PART II
VARIATION, SUSPENSION AND REVOCATION OF APPROVALS

6. Revocation of registration - (1) Where a foreign enterprise has -

- (a) contravened any law of the Cook Islands (including the Act and these Regulations); or
- (b) failed to comply with any term or condition of its registration as a foreign enterprise,

and the Directors, having regard to the nature of the contravention or failure as the case may be, consider that it is undesirable that the enterprise should continue to be registered under this Act, or registered in respect of a particular activity, the directors shall notify the foreign enterprise of their opinion and of their reasons for such opinion, and shall invite the foreign enterprise to make representations within a period specified by the directors, being in any event not less than 21 days, as to why registration of the enterprise as a foreign enterprise under the Act should not be revoked, either wholly or in respect of any particular activity.

(2) Upon receipt of any representations made under subclause (1), and after due consideration of those representations or, on expiry of the specified period if no such representations are made, the Directors may revoke the registration of the foreign enterprise either -

- (a) wholly; or
- (b) in respect of any particular activity.

(3) Where the registration of a foreign enterprise is revoked pursuant to subsection (2), either wholly or in respect of any particular activity, the Directors shall give notice to the Minister and to the foreign enterprise of their decision and of the reasons for such decision.

(4) The revocation of the registration of a foreign enterprise pursuant to subclause (2) shall not in any way affect any liability of that foreign enterprise to its creditors or to any person interested in the affairs of the foreign enterprise, or the rights of such creditors or persons, whether or not the liability or right shall have arisen before or after the date that the revocation shall take effect.

7. Variation suspension and revocation of concessions - (1) Where the Directors are of the opinion that a foreign enterprise has contravened or failed to comply with any term or condition of the granting to it of any incentive or concession and the Directors, after due enquiry and having regard to the nature of the contravention or failure as the case may be, considers that it is undesirable that the enterprise or any activity carried on by it should continue to receive any incentive or concession, the Directors shall notify the enterprise of its opinion and of the reasons for such opinion, and shall invite the enterprise to make representations within a period specified by the

Directors, being in any event not less than 21 days, as to why the grant to the enterprise of any incentive or concession should not be revoked.

(2) On receipt of any representations made under subsection (1), and after due consideration of those representations or, upon the expiry of the specified period if no such representations are made, the Directors may revoke the grant to the enterprise of any incentive or concession.

(3) Where the directors revoke any grant to the enterprise under subclause (2), the Directors shall give notice in writing to the Minister and to the enterprise of its decision and of the reasons for such decision.

PART III **ANNUAL RETURNS**

8. Annual returns - The annual return required by section 34 of the Act shall -
- (a) be filed with the Board not later than the 30th June in every year; and
 - (b) set out in writing the following information -
 - (i) the name of the enterprise;
 - (ii) the address of the registered office and principal place of business of the enterprise;
 - (iii) the activities of the enterprise;
 - (iv) the names and addresses of its directors, chief executive officer, secretary, accountant and auditor or the persons carrying out these functions;
 - (v) details of its shareholding together with changes therein since the last 30th June with respect to -
 - (vi) authorised, issued and paid-up shares; and
 - (vii) shareholders showing the number, class, nominal and paid-up shares held by each shareholder or on behalf of a beneficiary,provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of a person or beneficial owner.
 - (viii) the activities being carried on in the Cook Islands by the enterprise;
 - (ix) evidence of compliance with any conditions imposed;
 - (x) details of incentives concessions and benefits granted to the enterprise.

PART IV **ADMINISTRATION**

9. Qualifications of Directors - No person shall be appointed as a Director of the Board unless that person has had not less than 3 years experience in either the private sector or the public sector.

10. Term of office of Directors - (1) Every Director shall hold office for a term of 2 years but may from time to time be re-appointed.

(2) Notwithstanding subclause (1), a Director may be removed by the Minister for incompetence, disability, neglect of duty bankruptcy or misconduct proved to the satisfaction of the Minister, or may resign by written notice to the Minister.

(3) Notwithstanding subclause (1), a Director whose term of office has expired by reason of time shall continue to hold office until his successor is appointed.

11. Remuneration of Directors - (1) The Directors shall receive the remuneration set out in the Second Schedule to these Regulations.

(2) Every Director shall, in addition to the remuneration set out in the Second Schedule, be entitled to reasonable and actual out of pocket expenses incurred in connection with his function as a Director.

12. Meetings of the directors - (1) The chairperson shall convene meetings of the directors whenever the chairman or not less than two other directors or the Minister deem it necessary to do so.

(2) Notice of every meeting shall be given to every director for the time being present in the Cook Islands.

(3) At all meetings of directors the quorum necessary to transact business shall be not less than half the directors for the time being holding office.

(4) The chairperson shall preside at all meetings of the directors at which he or she is present, and if the chairperson is not present, the directors present shall elect one of their number to be chairperson at that meeting.

(5) All questions arising at a meeting of the directors shall be decided by a majority of the valid votes recorded thereon, and in the event of an equality of votes, the chairperson shall have a casting as well as a deliberative vote.

(6) Subject to this Act and any regulations made thereunder, the directors may regulate its procedure in such manner as they think fit.

(7) The chief executive of the Board shall attend every meeting of the directors unless excused by the directors.

13. Minutes of meetings - (1) The directors shall cause minutes to be kept of all their proceedings and decisions.

(2) The minutes shall be signed by the chairperson of that meeting, at the next succeeding meeting.

(3) A copy of the minutes of every meeting shall be furnished to every director.

14. Directors may invite advisers - The Directors may, if it considers it appropriate, invite persons who are not Directors to attend a meeting of the Directors for the purpose of providing advice, or information which is likely to assist the Board in the exercise of any of its

functions.

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15. Committees - The Directors may from time to time establish committees, the membership of which may consist of such persons, whether Directors or employees of the Board or otherwise, as the Board considers are likely to assist the board in the exercise of its functions. The quorum of every such committee shall be fixed by the Directors.

16. Consultants and advisers - The Directors may by resolution engage consultants and advisers on terms and conditions approved by the Directors when the Directors are satisfied that such consultants and advisers have knowledge and experience which will assist the Board in the attainment of its objects or in the carrying out of its functions.

17. Service of notices - For the purposes of this Act, any notice to be given by the Board shall be deemed to have been served if delivered or sent by or on behalf of the Board by personal delivery, mail or facsimile to -

- (a) the last known place of business in the Cook Islands of the enterprise; or
- (b) the last known place of business or residence in the Cook Islands of any person who is an officer member or shareholder of the enterprise; or
- (c) where the business or person is represented by a barrister, solicitor accountant or agent in the Cook Islands, to such barrister, solicitor accountant or agent.

Clerk of the Executive Council

These Regulations are administered by the Development Investment Board

BY AUTHORITY:
Cook Islands Government - 1996

FIRST SCHEDULE
(Application Fees)

Application for registration as a foreign enterprise	-	\$100.00
Application for incentives and concessions	-	\$100.00
Every other application	-	\$100.00

SECOND SCHEDULE
(Remuneration of Directors)

Chairperson per meeting	-	\$150.00
Other Directors per meeting	-	\$100.00

THIRD SCHEDULE
(Investment incentives and concessions)

A schedule of incentives and concessions to encourage the establishment of trade, investment and business.

1. **Tariff Protection**

Import duty may be increased by an amount on a class of commodity presently or proposed to be produced or supplied by an enterprise to protect an approved activity where:

- (i) The activity is import substituting; and
- (ii) The protection is essential for the initial survival of the approved

- activity; or
- (iii) There is threat of excessive or unreasonable trade competition by a foreign exporter into the Cook Islands of such a commodity.

2. **Import Duty Concessions**

(a) **Capital items**

Partial or full exemption from import duty may be granted to an enterprise on the importation, or refund of duty granted to an enterprise on plant, equipment, machinery or construction materials used or to be used in an approved activity, provided:

- (i) Where the establishment of a project extends over several years, the concession or exemption granted under this provision shall not extend for more than two years;
- (ii) In the case of an existing or established enterprise, the replacement of capital items due to normal wear and tear or other causes together with consumable stocks shall not qualify for exemption from duty.

(b) **Raw Materials**

Partial or full exemption from import duty may be granted to an enterprise in respect of any essential raw or processed materials used directly in any production or manufacturing process in an approved activity which is import substituting or export generating for any specified period of time not exceeding 5 years; Provided however the Board may in its discretion extend such concession for one further period of 5 years.

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3. **Tax Incentives**

(a) **Tax concessions**

Where any new or existing enterprise establishes a new activity in the Cook Islands, or where an activity already existing in the Cook Islands is materially expanded by any new or existing enterprise, and the Board is satisfied that such establishment or expansion (as the case may be) will contribute substantially to the economic development of the Cook Islands, the Board may grant to that enterprise such concessions in respect of taxation on the income derived from that activity as the Board in its discretion thinks fit.

A concession granted by the Board may take the form of a partial or full tax concession and may be granted for any period not exceeding five years to an enterprise engaged in an approved activity.

(b) Recruitment of skilled Cook Islanders domiciled overseas

(1) 200 percent of the allowable expenditures and costs on the recruitment of an employee who is a Cook Islander ordinarily domiciled overseas may be granted to any enterprise as a deduction against the taxable income of the enterprise in the year it is incurred, provided the enterprise satisfies the Board that:

- (i) The person possesses the skill and expertise for the job or position designated; and
- (ii) The person will be employed by the enterprise; and
- (ii) The person intends to reside permanently in the Cook Islands.

(2) The allowable expenditures and costs in each instance shall include:

- (i) One-way fares for the person, spouse and any children under 15 years of age;
- (ii) The cost of freight (to a maximum of \$5000) of personal effects;
- (iii) Establishment and re-location costs of up to \$5,000.

(c) Counterpart training

(1) Where an enterprise employing an employee other than a Cook Islander, or an expatriate designates a Cook Islander to be trained to replace the expatriate employee in that position or job, up to 200 percent of the direct cost of training incurred during each year may be claimed against the taxable income of the enterprise over the first three years of training.

(2) The allowance training costs shall include:

- (i) In the case of overseas training - tuition fees, costs of materials directly associated with the course, fares of the trainee, salary or bursary paid to the trainee during the period of training, provided however that the enterprise first satisfies the Board that the training cannot be adequately carried out in the Cook Islands; or

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- (ii) In the case of local training - tuition fees, costs of materials directly associated with the course, and where on-the-job training is provided by an expatriate, the portion of the salary of the expatriate directly related to the on-the-job training;

(d) Depreciation Allowances

Accelerated depreciation allowances up to 200 percent of the rate specified in the Income Tax Act 1972 may be granted on plant, machinery, equipment, and permanent buildings used or to be used in any approved activity.

5. **Residence Permits**

Subject to such conditions normally applying from time to time, residence and work permits may be granted for periods up to three years to key personnel or employees of an approved enterprise.