

**CHAPTER 134**

**NATIVE LAND TRUST**

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**SECTION 33—NATIVE LAND TRUST (LEASES AND LICENCES)  
REGULATIONS**

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*Short title*

1. These Regulations may be cited as the Native Land Trust (Leases and Licences) Regulations.

*Interpretation*

2. In these Regulations, unless the context otherwise requires, "improvements" includes any of the items specified in the First Schedule.

*Manner in which leases may be granted*

3. The grant of leases of native land may be effected by the Board by way of private treaty, public auction or public tender.

*Purposes for which, and terms, conditions and covenants subject to which, leases may be granted*

4. Native land may be leased by the Board for such purposes as it deems proper and subject to such terms as to rent, premium or otherwise and to such conditions and covenants as the Board shall determine, being terms, conditions and covenants which are not inconsistent with any of the provisions of these Regulations.

*Form of leases*

5. Every lease of native land shall be in the form set out in the Second Schedule.

*Maximum term of leases*

6. A lease of native land may be granted for such term as the Board shall determine, but shall not in any case exceed ninety-nine years.

*Fees*

7. The fees prescribed in the Third Schedule shall be payable to the Board in respect of the matters specified therein.

*Consent of the Board to dealings with demised land, etc.*

8.—(1) An application for the consent of the Board under section 12 of the Act to deal with any native land shall be in such a form and shall be accompanied by such information and evidence as the Board shall determine.

(2) The Board may attach to the grant of such consent a condition requiring that the instrument giving effect to the dealing consented to by the Board shall be executed, or executed and registered in such register as the Board shall direct, within the three months commencing on the date on which the consent was granted or such longer period commencing on that date as the Board shall determine; and in the event of such a condition not being complied with, the consent of the Board shall be deemed to be null and void.

(3) The Board may, on application being made to it for such consent, require the payment of such deposit as it deems proper, in addition to any fee payable under regulation 7 in respect of the application; and such deposit shall be refunded to the applicant by the Board—

(a) where such consent is refused by the Board; or

- (b) where such consent is granted by the Board and the Board is satisfied, on information supplied to it by the applicant within such period as the Board shall determine, that the instrument giving effect to the dealing consented to has been executed, or executed and registered, in accordance with paragraph (2), or that the dealing consented to will not be completed.

*Dealings with land in a native reserve*

9.—(1) Land in a native reserve held under or by virtue of a lease, agreement for a lease or tenancy at will, or any part of such land, shall not be transferred, mortgaged, assigned, sublet, licensed or in any other manner whatsoever dealt with or passed to any person other than a native Fijian; and any purported or attempted transfer, mortgage, assignment, sublease, licence or other dealing which is in contravention of this paragraph shall be null and void.

(2) Notwithstanding the generality of paragraph (1), the Board may, by resolution published in the *Fiji Royal Gazette*, authorise the appointment of person who is not a native Fijian to deal in land in a native reserve leased to a native Fijian, subject to the following conditions, that is to say, that—

- (a) before authorising such appointment, the Board shall satisfy itself that the appointment will be to the benefit of native Fijians;
- (b) the appointment shall be made in writing by the Board and shall subsist only for a period specified in the instrument of appointment;
- (c) the Board may, in its absolute discretion, renew the appointment for a further period or periods; and
- (d) the Board may at any time rescind the appointment without cause being shown.

*Licences*

10. The Board may, by licence, grant such rights in, on, under or over native land, for such purposes and subject to such terms, conditions and covenants as the Board shall determine.

*Distribution of balance of rents and purchase-monies*

11.—(1) After deduction of any sums in accordance with section 14 of the Act, the balance of any monies received by the Board by way of rents and premiums in respect of native land shall be distributed by the Board as follows:—

- (a) to the proprietary unit, seventy per cent;
- (b) to the turaga ni mataqali, fifteen per cent;
- (c) to the turaga ni yavusa, ten percent; and
- (d) to the turaga i taukei, five per cent.

(2) Where the Board has determined that any purchase monies received in respect of the sale or other disposition of native land shall be distributed, after the deduction therefrom of any expenses incurred by the Board in respect of such sale or other disposition, the balance thereof shall be distributed in accordance with paragraph (1).

(3) Where there is more than one division or subdivision of the people within the same proprietary unit, the turaga of the same status shall share equally the sum payable to them under paragraph (1) irrespective of whether or not any other sum is payable to any of them under that paragraph in their capacity as turaga of any other division or subdivision within such proprietary unit.

*Agreements for leases granted subject to this regulation*

12.—(1) Where the Board has approved that grant of a lease of native land to any person subject to this regulation, the Board shall cause to be served on that person for execution by him an agreement for the lease of that land, in duplicate, together with a notice in writing stating that the Board has approved the grant of the lease subject to this regulation and requiring that person, before the date specified in the notice in that behalf—

(a) to execute both copies of the agreement and to return one copy thereof to the Board, duly executed; and

(b) to pay to the Board all monies due and payable by that person on or before that date under and in respect of the agreement, whether by way of premium, rent, fees, stamp duty or otherwise.

(2) No tenancy of native land shall be taken to subsist by virtue of any notice served in pursuance of paragraph (1) unless and until all the requirements of the notice as are mentioned in paragraphs (a) and (b) of that paragraph have been complied with, notwithstanding that any person has entered into possession of that land, with or without the consent of the Board, and notwithstanding that any rent shall have been received by the Board in respect of that land.

(3) An agreement for a lease of native land served on any person in pursuance of paragraph (1) shall set out in full the terms, conditions and covenants subject to which the land is to be demised and shall contain—

(a) a description of the land, whether by reference to a plan or otherwise;

(b) a condition to the effect that if that person shall not, within three months of being required to do so by notice in writing served on him by the Board—

(i) engage the services of a surveyor registered under the Surveyors Act to carry out a survey of that land and to prepare a survey plan in accordance with the regulations made under that Act; and

(ii) produce to the Board evidence satisfactory to the Board that the services of such a surveyor have been so engaged by him; the agreement shall cease to have effect; and

(c) a condition to the effect that if that person fails or refuses to execute the lease which he has agreed to take pursuant to the agreement within three months of being required to do so by notice in writing served on him by the Board, the agreement shall cease to have effect.

(4) Without prejudice to any right of action or other remedy which the Board may have against any person on whom a notice has been served in pursuance of paragraph (1) in respect of any native land, where that person has failed or refused to comply with all the requirements of the notice as are mentioned in sub-paragraphs (a) and (b) of that paragraph or has failed to comply with any of the conditions of the related agreement for the lease of that land as are mentioned in sub-paragraphs (b) and (c) of paragraph (3), then—

(a) if that person or any other person claiming through him has entered into possession of that land, the Board may re-enter into possession, and that person or that other person, as the case may be, shall be liable to pay compensation to the Board in respect of any loss suffered by the Board arising out of the possession of the land by him and in respect of any damage caused by his act or default or the act or default of his servants or agents in connection with such possession; and

- (b) any monies paid to the Board by that person or any other person claiming through him in respect of that land by way of rent, premium, fees, stamp duty or otherwise shall be forfeited.

*Re-assessment of rent*

13.—(1) Subject to paragraph (8), the Board or a lessee of any native land may, by notice in writing served on the other party not earlier than one year and not later than three months before the appointed date, propose that the rent payable under the lease of that land from the appointed date shall be at such yearly rate as shall be specified in the notice (hereinafter referred to as a “notice of re-assessment”).

(2) The party on whom a notice of re-assessment has been served in accordance with paragraph (1) may, by notice in writing (hereinafter referred to as a “counter-notice”) served on the other party not later than the two months commencing on the date of the service of the notice of re-assessment, signify his intention to refer the question of the re-assessment of the rent for determination by arbitration in pursuance of regulation 21.

(3) If a counter-notice is not served in accordance with paragraph (2) or if a counter-notice is so served but no reference for determination by arbitration in pursuance of regulation 21 has been made within one month commencing on the date of the service of the counter-notice, the rent payable under the lease shall, as from the appointed date, be payable at the rate specified in the related notice of re-assessment, but without prejudice to a further re-assessment of the rent in accordance with this regulation.

(4) If a counter-notice is served in accordance with paragraph (2) and a reference for determination by arbitration in pursuance of regulation 21 as mentioned in paragraph (3) is made, then the parties shall, for the purposes of such arbitration, be taken to be in dispute as to the rent properly payable under the lease as from the appointed date:

Provided that this paragraph shall cease to have effect upon the parties agreeing the said rent.

(5) For the purposes of this regulation, the rent properly payable under a lease of native land shall be the annual rent at which that land might reasonably be expected to be let in the open market by a willing lessor to a willing lessee if the full term of the lease had yet to run, having regard to the terms, conditions and covenants contained in the lease (other than those relating to rent) and assuming that the environment of the demised land is in all respects as it is or may reasonably be expected to be, at the appointed date, but disregarding—

- (a) any effect on rent of the fact that the lessee is in occupation of the land; and,
- (b) the current value of any unexhausted improvements on the land, other than those which have a value in relation to the purpose for which the land is demised and which—
- (i) were executed during the term of a previous lease of the land at the expense of the lessee where the lessee, or the lessee under any subsequent lease, was not granted a new lease upon the expiration of that term; or
  - (ii) were executed by the Board; or
  - (iii) were in existence at the time the land was first leased.

(6) Where a notice of re-assessment (hereinafter referred to as "the first notice") is served on any party to a lease, any notice of re-assessment served by that party on the other party subsequently to the date on which the first notice was served and before the appointed date specified in the first notice shall be of no effect for the purposes of this regulation; and if notices of re-assessment are served by both parties on each other on the same date, only the notice of re-assessment served by the Board shall have effect for those purposes.

(7) In this regulation "the appointed date" means, in relation to any notice of re-assessment in respect of the rent payable under any lease, the date specified in the notice as the appointed date, being a date not earlier than five years from the later of—

- (a) the date of the commencement of the term of the lease;
- (b) the date as from which there last took effect a re-assessment made in pursuance of this regulation; and
- (c) the date as from which there last took effect a previous direction of an arbitrator, that the rent should continue unchanged.

(8) This regulation shall not apply in relation to a lease in which it is specifically provided that this regulation shall not do so.

*General provision as to conditions and covenants implied in a lease*

14.—(1) The following conditions and covenants shall be implied in every lease of native land, that is to say—

- (a) that the lessee shall pay all existing and future rates, taxes, assessments and outgoings now or hereafter imposed or charged upon the demised land or upon the owner or occupier in respect thereof;
- (b) that the lessee—
  - (i) shall not, in connection with the demised land, do or permit or suffer to be done anything in contravention of any written law;
  - (ii) shall indemnify the Board against all claims, demands, expenses and liability in connection with the demised land, and shall pay the costs, charges and expenses incurred by the Board in abating a nuisance or for remedying any other matter in connection with the demised land in compliance with any requirement imposed by or under any written law;
- (c) that the lessee shall not carry out any development on or in relation to the demised land, except with the consent in writing of the Board and except with any consent required by or under any written law in respect of any such development;
- (d) that if and whenever during the term of the lease—
  - (i) any rent thereby reserved or made payable or any part thereof shall be in arrears and unpaid for one month next after becoming payable (whether formally demanded or not);
  - (ii) there shall be any breach, non-performance or non-observance of any of the covenants on the part of the lessee contained in the lease or implied in the lease by virtue of these Regulations;
  - (iii) the lessee, being an individual, shall become bankrupt or, being a company, enters into compulsory or voluntary liquidation (save for the purpose of amalgamation or reconstruction of a solvent company);

- (iv) a receiver of the lessee shall be appointed or the lessee enter into any composition or arrangement with the lessee's creditors; or
- (v) the lessee shall suffer any distress or execution to be levied on his goods;

then, and in any such case, it shall be lawful for the Board at any time thereafter, and notwithstanding the waiver by the Board of any previous right of re-entry, to re-enter into and upon the demised land or any part thereof in the name of the whole and thereupon the term of the lease shall absolutely cease and determine, but without prejudice to any rights or remedies which may have accrued to the Board against the lessee or to the lessee against the Board in respect of any antecedent breach of any of the covenants contained in the lease.

(2) For the purposes of sub-paragraph (c) of paragraph (1) "development", in relation to any demised land, includes—

- (a) the carrying out of any building or engineering works designed to create, alter or add to, any improvements to the land; and
- (b) any use of the land or of any improvements thereto which is different from the purpose from which the land was demised under the current lease.

*Resumption of possession by the Board*

15.—(1) It shall be implied in every lease of native land commencing on or after the commencement of these Regulations that where the land demised is required by the Board for development (whether by the Board or otherwise) involving any use of the land, in whole or in part, which is materially different from the purpose for which the land was demised and in respect of which permission has been granted under the Town Planning Act, the Board may terminate the lease and resume possession of the land on the 30th day of June or the 31st day of December in any year during the term of the lease by notice in writing served on the lessee not later than one year before the date on which the Board desires to resume possession of the land, without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach of covenant.

(2) If, on the termination of a lease of native land in pursuance of paragraph (1), the lessee shall have paid the rent thereby reserved and payable and shall have reasonably performed and observed the terms, conditions and covenants therein contained, the lessee shall be entitled to be paid by the Board by way of compensation—

- (a) such sum as might reasonably be expected to be obtained in the open market by a willing seller from a willing purchaser in consideration for the transfer of the lease as at the date of resumption of possession by the Board and as if the notice referred to in paragraph (1) had not been served (any improvements to the land executed after the date of such notice being disregarded); and
- (b) such sum as represents the total amount of the unavoidable other loss incurred by the lessee in consequence of the exercise by the Board of its powers under this regulation, including, in particular, but without prejudice to the generality of the foregoing—
  - (i) loss or expenses incurred by the lessee in respect of the removal

or sale of his household goods, chattels or livestock on, or used in connection with, the demised land and in respect of his re-establishment in a comparable property in Fiji;

- (ii) the loss of the goodwill suffered by any business carried on by the lessee from or on the land demised by reason of the transfer or closure of that business resulting from the lessee's quitting of the demised land; and
- (iii) expenses incurred in respect of legal and other professional services in connection with the preparation of the lessee's claim for compensation hereunder (not being costs of any arbitration to determine any question arising under this regulation); and,

- (c) the full amount of any compensation payable by the lessee to any sub-lessee of the demised land or any part thereof in pursuance of paragraph (3).

(3) Where a lease of native land has been terminated in pursuance of paragraph (1) and the demised land or any part thereof was at the date on which the lease was so terminated in the possession of a sub-lessee with the written consent of the Board, the lessee shall be liable to pay to the sub-lessee such sum as the Board would have been liable to pay to the sub-lessee under sub-paragraph (a) and (b) of paragraph (2) had the sub-lessee been the lessee of that land or that part thereof.

(4) The right of the Board to terminate a lease by virtue of the condition implied therein by paragraph (1) shall also be exercisable in respect of part only of the demised land as if any reference in the foregoing provisions of this regulation to the demised land included a reference to a part thereof; and in the event of such right being exercised in relation to part only of the demised land the lessee shall be entitled—

- (a) to a reduction of the rent in such amount as shall be agreed by the parties or, should they fail to agree, by such amount as shall be settled by arbitration in pursuance of regulation 21; or
- (b) subject to the provisions of paragraph (5), to surrender the remainder of the demised land, in which case the provisions of paragraphs (2) and (3) shall have effect as if such right as aforesaid had been exercised in relation to the whole of the demised land.

(5) Sub-paragraph (b) of paragraph (4) shall not apply where the Board has served notice to resume possession of part of any demised land in pursuance of that paragraph and that part of that land is less than one-quarter of the size of the whole of that land unless, by reason of the severance of that part, the remainder of the demised land is no longer suitable for the purpose for which it was demised to the lessee.

*Extension of prescribed time limits*

16. Where under these Regulations or under any lease, any notice is required to be served or other thing done within a certain period, the Board may, on application being made to it in that behalf before or after the expiration of that period, extend that period; and thereupon these Regulations or that lease, as the case may be, shall have effect as if the reference therein to that period were a reference to that period as so extended.

*Extension of regulations 13, 14, 15 and 16 in relation to agreements for leases*

17. The provisions of regulations 13, 14, 15 and 16 shall apply in relation to a person holding native land by virtue of an agreement for a lease (whether he is at



law a tenant from year to year or otherwise, and whether or not the agreement is in equity equivalent to a lease) as if the references in those provisions—

- (a) to a lessee included a reference to such person;
  - (b) to a lease included a reference to such agreement;
  - (c) to the land demised included a reference to that native land;
- and any other expression therein contained shall be construed accordingly.

*Renewal of leases*

18.—(1) This regulation shall apply in relation to a person holding native land under a lease for a term of fixed duration or by virtue of an agreement for a lease for such a term, whether such term commenced before or after the commencement of these Regulations, except where—

- (a) such term is for five years or less;
- (b) such land is land to which the Agricultural Landlord and Tenant Act applies;
- (c) such land is in a native reserve;
- (d) such land is for time being excluded from a native reserve under section 17 of the Act for a specified period which will expire before or at the expiry of such term;
- (e) such lease or agreement for a lease contains a stipulation as to the renewal of the lease and such term commenced before the commencement of these Regulations; or
- (f) that person and the Board have agreed in writing that this regulation shall not apply in relation to that person.

(2) Subject to paragraph (9) a person in relation to whom this regulation applies who desires to take a new lease of the land held by him as mentioned in paragraph (1) upon the expiration of the current term (that is to say, the term of the lease or the term agreed to be granted under the agreement for the lease by virtue of which he holds that land, as the case may be) shall, not earlier than two years and not later than one year before the expiration of the current term, serve on the Board a notice in writing of such his desire (hereinafter referred to as a “notice to renew”).

(3) Subject to paragraph (4), where a notice to renew has been served on the Board by any person (hereinafter referred to as “the applicant”) in accordance with paragraph (2) in relation to any native land, the Board shall—

- (a) grant a lease of the land to the applicant—
  - (i) for a further term which shall not be less than the current term but shall not exceed ninety-nine years;
  - (ii) for the same purpose as the purpose for which the land is presently held; and
  - (iii) subject to such terms as to rent, premium or otherwise and to such conditions and covenants as may be agreed between the parties, or as may be determined by arbitration under the provisions of paragraph (6), and as are not inconsistent with any of the provisions of these Regulations; or
- (b) refuse to grant a lease of the land for a further term.

(4) Where any land in relation to which a notice to renew has been so served on the Board is land which is for the time being excluded from a native reserve under section 17 of the Act for a specified period, the Board shall not grant a lease

of that land in pursuance of paragraph (3) for a further term extending beyond the date of expiry of that period.

(5) Subject to paragraph (9), where, upon the service on the Board of a notice to renew relating to any native land, the Board has decided to grant a lease of that land to the applicant for a further term in pursuance of paragraph (3), the Board shall, not less than six months before the expiry of the term in relation to, and during the currency of which, such notice was served on the Board, serve a notice in writing on the applicant intimating the decision of the Board and setting out in full the terms as to rent, premium or otherwise and the conditions and covenants subject to which the Board proposes that the new lease shall be granted.

(6) Within three months of the date on which a notice is served on him by the Board under paragraph (5), the applicant shall serve on the Board a notice in writing—

- (a) accepting all the terms, conditions and covenants proposed by the Board; or
- (b) requiring the Board to refer its proposals to arbitration under regulation 21.

(7) Where a notice is served on the Board under and in accordance with paragraph (6) requiring the Board to refer its proposals to arbitration under regulation 21, the Board shall refer the same to arbitration under that regulation within one month of the date on which the notice was so served.

(8) If, following the service on the Board of a notice to renew in relation to any land, the applicant—

- (a) fails to serve a notice on the Board under and in accordance with paragraph (6); or
- (b) fails or refuses to execute a lease incorporating the terms, conditions and covenants accepted by him by a notice served on the Board under paragraph (6) or determined by arbitration in pursuance of any requirements contained in such notice within three months of the date on which the lease is served on him by the Board;

then, the notice to renew shall be deemed to have been cancelled and the applicant shall yield up possession of that land to the Board together with any improvements thereto upon the expiry of the term in relation to, and during the currency of which, the notice to renew was served; and no tenancy of that land shall be taken to subsist as between the Board and the applicant, or any person claiming through the applicant, following the expiry of such term notwithstanding that the applicant or any such person has remained or entered into possession of that land, with or without the consent of the Board, and notwithstanding that any rent shall have been received by the Board in respect of that land.

(9) Where, in any case to which this regulation applies, the term for which the land in such a case is demised or agreed to be demised, as the case may be, falls to expire within eighteen months after the commencement of these Regulations—

- (a) paragraph (2) shall have effect as if the notice required to be served thereunder were required to be served within six months after the commencement of these Regulations; and
- (b) paragraph (5) shall have effect as if the notice required to be served thereunder by the Board were required to be served within six months of the date on which the related notice to renew was served on the Board.

*Compensation payable by the Board on refusing to renew a lease*

19.—(1) Where a notice to renew has been served on the Board by any person in accordance with paragraph (2) of regulation 18 in relation to any native land and—

- (a) the Board has refused to grant a lease of that land for a further term or is deemed under paragraph (2) to have refused to grant such a lease; and
- (b) at the expiration of the term in relation to, and during the currency of which, the notice to renew was served, the applicant shall have—
  - (i) paid the rent payable by him under the related lease or by virtue of the related agreement for a lease, as the case may be;
  - (ii) reasonably performed and observed the terms, covenants and conditions contained in the said lease or agreement and on his part to be performed and observed; and
  - (iii) yielded up possession of that land;

the Board shall pay to the applicant by way of compensation such sum as shall have been agreed by the Board and the applicant or as shall have been determined by arbitration on a reference made under and in accordance with paragraph (3).

(2) Subject to paragraph (4), for the purposes of paragraph (1), where such notice to renew has been served on the Board in relation to any native land, the Board shall be deemed to have refused to grant a lease of that land for a further term if the Board does not serve on the applicant—

- (a) a notice under and in accordance with paragraph (5) of regulation 18; or
- (b) at least six months before the expiry of the term in relation to, and during the currency of which, such notice to renew was served, a notice in writing intimating the decision of the Board to refuse to grant such a lease.

(3) Where, upon such notice to renew being served on the Board in relation to any native land, the Board has refused to grant to the applicant a lease of that land for a further term or is deemed to have done so as mentioned in paragraph (2), and the Board and the applicant are unable to agree the amount of the compensation payable under paragraph (1), the Board or the applicant may, at any time within the three months next following the expiry of the term in relation to, and during the currency of which, the notice to renew was served, refer the question of the amount of compensation which should be so payable for determination by arbitration in pursuance of regulation 21; and for the purposes of such arbitration the compensation properly so payable shall be taken to be the amount which might reasonably be expected to be obtained in the open market by a willing seller from a willing purchaser in consideration for the transfer of a lease of that land at the commencement of the term thereof if the Board had granted a lease of that land to the applicant in pursuance of paragraph (3) of regulation 18 upon such terms, conditions and covenants as are fair and reasonable having regard to the provisions of the Act and of these Regulations, but disregarding any element of development value.

(4) In any case to which paragraph (9) of regulation 18 applies—

- (a) the foregoing provisions of this regulation shall have effect as if any reference therein to a notice to renew served under and in accordance with paragraph (2) of regulation 18 were a reference to a notice to renew served under and in accordance with that paragraph as having effect by virtue of the said paragraph (9);

- (b) paragraph (2) shall have effect as if—
- (i) the reference in sub-paragraph (a) thereof to paragraph (5) of regulation 18 were a reference to that paragraph as having effect by virtue of paragraph (9) of that regulation; and
  - (ii) the period referred to in sub-paragraph (b) thereof were the period of six months commencing on the date on which the notice to renew was served on the Board; and
- (c) paragraph (3) shall have effect as if the period referred to therein were the period of three months next following the date on which the notice of the Board was served on the applicant under paragraph (5) of regulation 18, as having effect by virtue of paragraph (9) of that regulation or, as the case may require, the period of three months next following the expiry of the period of six months referred to in sub-paragraph (b) of paragraph (2), as having effect by virtue of sub-paragraph (a).

*Boundary marks, etc.*

20.—(1) Where the boundaries of any native land have been marked on the ground, then, whether or not the land has been surveyed, any person in occupation of the land under or by virtue of a lease, agreement for a lease or tenancy at will shall maintain such boundary marks in good condition and shall take all reasonable steps to—

- (a) protect them from loss or damage and from being displaced;
- (b) keep such boundary marks and the boundary lines free from any vegetation so as to enable them to be readily located and followed at any time.

(2) Where any boundary forms a common boundary between contiguous parcels of native land each of which is held under or by virtue of a lease, an agreement for a lease or a tenancy at will, the persons in occupation thereof shall be severally liable to comply with the provisions of paragraph (1).

(3) Any person who fails to comply with the provisions of paragraph (1) shall be liable for the payment to the Board of a sum equal to the cost of making good his default, and such sum shall be recoverable by the Board as a civil debt.

(4) In the event of a survey disclosing that any part of a parcel of land purporting to have been agreed to be demised under an agreement for a lease of native land is not native land or is comprised in a parcel of native land which has already been demised or agreed to be demised, such part shall be deemed to not to have been at any time comprised in the parcel of land agreed to be demised under that agreement.

*Arbitration*

21.—(1) Any matter referred for determination by arbitration under and in accordance with these Regulations, and any difference arising between the Board and any person touching anything contained in these Regulations, in the operation or construction of these Regulations, of any lease, agreement for a lease or licence, or the rights, duties and liabilities of the parties under or in connection with a lease, agreement for a lease or licence, shall be determined by a single arbitrator in accordance with the Arbitration Act:

Provided that nothing in this regulation shall be taken to authorise the reference for determination by arbitration of any difference arising out of the refusal of the Board to grant a lease of native land to any person otherwise than by way of renewal.

(2) In determining any rent, compensation or other payment referred to him under these Regulations, the arbitrator—

(a) shall disregard any proposal made by any party as to such rent, compensation or other payment; and

(b) shall have regard solely to the provisions of these Regulations with respect to any such matter so referred to him.

(3) The arbitrator may, if he so desires, sit with two assessors, one appointed by each party, but all decisions and any award shall be made by him and shall be his alone.

*Revocation of Native Land (Leases and Licences) Regulations*

22. The Native Land (Leases and Licences) Regulations are revoked.

*Savings in relation to existing leases of native land, etc.*

23.—(1) Notwithstanding the revocation of the Native Land (Leases and Licences) Regulations by regulation 22, the provisions of these Regulations set out in the Fourth Schedule shall continue to have effect in relation to any native land held under a lease, tenancy at will or by virtue of an agreement for a lease and in relation to any licence, where such lease, tenancy, agreement or licence was in force immediately before the commencement of these Regulations, in all respects as if these Regulations had not been made.

(2) The provisions of regulation 13 shall apply in relation to a lease or an agreement for a lease of native land entered into before, and in force at, the commencement of these Regulations except where the rent thereunder is not liable to reassessment at any time or was not, before the commencement of these Regulations liable to reassessment in accordance with the provisions of regulation 21 of the Regulations revoked by regulation 22:

Provided that—

(a) the rent shall not be reassessed more often than is provided for in the lease; and

(b) the amount of the rent as reassessed shall not exceed the maximum amount thereof provided for in the lease or by the aforesaid regulation 21.

## FIRST SCHEDULE

### (Regulation 2)

#### DEFINITION OF IMPROVEMENTS

The following shall be included within the meaning of "improvements":—

1. Clearing, levelling, grading and excavation of land
2. Drainage or irrigation of land
3. Reclamation of swamps or other soil conservation or reclamation works of a permanent nature
4. Wells, water tanks and water supply systems
5. Surveying and pegging of boundaries for the purposes of the Land Transfer Act
6. Placing of boundary marks
7. Erection of fences
8. Landscaping
9. Planting of long-lived crops, trees and shrubs
10. Laying out and cultivation of nurseries

11. Buildings and other structures
12. Fixed plant and machinery
13. Roads, tramways, yards, gates and bridges
14. Culverts, ditches, drains, soakaways, cesspits and septic tanks
15. Dips and spray races for livestock

SECOND SCHEDULE  
 (Regulation 5)

FORM OF LEASE

STAMP DUTY  \$: Stamp Duty paid vide RR. No. of Dep. Commissioner of Stamp Duties	MEMORANDUM OF LEASE  Native Land Trust (Leases and Licences) Regulations  (This lease must be in triplicate).	Native Lease No.										
		FEES. <table style="width: 100%; border: none;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right;">\$</td> <td style="text-align: right;">c</td> </tr> <tr> <td>Registration Fee</td> <td></td> <td></td> </tr> <tr> <td>Plan Fee</td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td></td> <td></td> </tr> </table> Revenue Receipt No. Date: Initials:		\$	c	Registration Fee			Plan Fee			Total
	\$	c										
Registration Fee												
Plan Fee												
Total												

The Native Land Trust Board (hereinafter called the Lessor) hereby leases to [name, residence, occupation, or other description of lessee], (hereinafter called the Lessee) to be held by the Lessee as tenant for the term of \_\_\_\_\_ years commencing on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at the yearly rental of [in words and figures] to be paid to the Lessor in equal half-yearly instalments in advance on the first days of January and July in every year, ALL THAT PIECE OR PARCEL OF LAND described as follows and hereinafter referred to as the demised land:—

Name of Land	Tikina	Province	Area
			Ha.

owned by the \_\_\_\_\_ be the area a little more or less and contained within the boundaries more particularly delineated and marked on the plan hereto annexed and coloured \_\_\_\_\_ excepting and reserving out of this demise all timber and timber-like trees, gravel and sand, lime and common stone, mines, minerals and petroleum, on or under the demised land together with full power for the persons entitled to such things to work and get the same either by entry on the surface or by underground workings.

This lease is subject to the following conditions, restrictions and covenants:—

Native Lease No.:

Registered at:

Registrar of Titles

The Lessee hereby covenants that he will fulfil and be bound by all terms conditions restrictions and covenants expressed or implied herein or implied by any written law.

In witness whereof the Seal of the Board is hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

The Common Seal of the Native Land Trust Board was hereunto affixed in pursuance of resolution of the Board by and in the presence of

Member of the Board

The signature (or mark of) [if lessee is illiterate he must sign by affixing his left thumb mark if possible] was made in my presence and I verily believe that such signature is of the proper handwriting/left thumb print of the person described in the above lease as the lessee, and I certify that I have read over and explained the contents hereof to the lessee in the language and he appeared

Secretary

Lessee

Witness

fully to understand the meaning and effect thereof.]

### THIRD SCHEDULE

(Regulation 7)

#### SCALE OF FEES

Description of matter (1)	Fee (2)
1. On application for a lease or tenancy or licence.....	\$30
2. Preparation of planning application, and submission to Department of Town and Country Planning, on behalf of applicant.....	\$50
3. Issuing a Survey Instructions to applicant's appointed land surveyor for preparation of survey diagrams.....	\$50
4. Preparation and processing of Lease documents for registration under the Land Transfer Act.....	\$60
5. Preparation and issuing of an Instrument of Tenancy (ALTA), or an Agreement for a Lease.....	\$60
6. Application for, and Issue of, Certified copy of Title Document; advertising costs, plus.....	\$50
7. Issue of licence.....	\$50
8. On preparation of a variation document for lease or tenancy (but excluding that required for an increase in rent and a statutory extension under the Agricultural Landlord and Tenant Act).....	\$40
9. Application for the consent of the Board to the mortgaging of land.....	\$30

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10.	Application for the consent of the Board to the subletting of land .....	\$30
11.	Application for the consent of the Board to the transfer of land .....	\$50
12.	Application for the sub-division of land (i.e. a surrender of part of the land included in a lease and its re-leasing in one or more lots to third party(ies) .....	\$50
13.	Search Fee .....	\$5
14.	Application for approval of plans of buildings or other improvements (excluding installation of water meters)....	\$30
15.	Application for approval of installation of water meter	\$5
16.	Other matters .....	A fee commensurate with the work involved.

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FOURTH SCHEDULE  
(Regulation 23)

PROVISIONS OF NATIVE LAND (LEASES AND LICENCES)  
REGULATIONS SAVED

*Maximum term of leases other than tramway and grazing leases*

20.—(1) Leases, other than tramway and grazing leases, shall for the purpose of determining the maximum terms thereof be classified as follows:—

(a) leases in properly designed areas in which due provision has been made for roading, commercial areas, school sites, cemetery and recreation reserves, etc.;

(b) leases of isolated unplanned areas outside the margins of settled areas;

(c) leases in settled areas requiring replanning and re-parcelling.

(2) The maximum term of a lease in class (a) above shall be ninety-nine years.

(3) The maximum term of a lease in class (b) above shall be fifty years provided that if during such term the land becomes part of a properly designed area the lessee shall surrender the lease and shall be entitled to a lease for ninety-nine years in class (a), subject to the necessary amendment of the boundaries.

(4) The Board shall divide leases in class (c) above into zones or groups, and shall fix the date of determination of all leases in such zones or groups. Such date shall be not later than thirty years after the commencement of these Regulations. No lease in such zones or groups shall be granted after such date except in accordance with an approved scheme of replanning and re-parcelling.

*Term of tramway lease*

(5) The maximum term of a tramway lease shall be ninety-nine years.

*Term of grazing lease*

(6) The maximum term of a grazing lease shall be fifty years, provided that the Board shall have power at the expiration of each ten-yearly period of the lease to



resume any portion thereof not exceeding one-fifth of the original area of the lease, upon giving six months notice in writing of its intention to do so, without payment of compensation.

*Conditions in leases other than commercial, residential or tramway leases*

24. All leases other than commercial, residential or tramway leases shall be subject, in addition to any other conditions which the Board in the circumstances of any case may see fit to impose, to the condition that only such buildings shall be erected on the land as are necessary for—

- (a) a dwelling or dwellings for the lessee;
- (b) dwelling for persons *bona fide* employed on the land; such as stockmen, farm, plantation or quarry labourers and supervisors;
- (c) accommodation for implements, vehicles, horses and other stock used in connection with the farm, plantation or quarry, or any building directly connected with the work of a farm, plantation or quarry, as the case may be.

*Conditions of lease for agricultural purposes*

25. All leases for agricultural purposes shall be subject, in addition to any other conditions which the Board in the circumstances of the case may see fit to impose, to the following conditions:—

- (a) that the lessee shall within a specified number of years and under penalty of re-entry effect to the satisfaction of the lessor such permanent improvements, which may include fencing, as may be specified in the lease;
- (b) that the lessee shall plant with crops in a good and husbandlike manner within the first five years of the lease at least one-fifth of the land suitable for cultivation; at least two-fifths of the said area within the first ten years of the lease; at least three-fourths of the said area within the first twenty years of the lease; and at least three-fourths of the land suitable for cultivation shall be kept planted as aforesaid for the remainder of the term of the lease;
- (c) that the lessee shall manure the portions of the land planted as aforesaid and shall keep the whole in good condition and shall not allow any part to become impoverished and shall use such artificial or other manure as may be required by the lessor or an officer authorised by the lessor in that behalf in writing;
- (d) that the lessee shall apply such measures to check soil erosion as may be required by the lessor in writing and shall maintain such measures to the satisfaction of the lessor or of an officer appointed by the lessor in writing. Such measure shall include one or more of the following: strip cropping, terracing, contour planting, cover cropping, rotation of cropping, construction of drains or dams, and construction of fences;
- (e) that the lessee shall not fell trees or clear or burn off bush or cultivate any land within a distance of twenty-four feet from the bank of a river or stream;
- (f) that the lessee shall not cultivate any crops within thirty-three feet of the centre of any public road or on a slope exceeding thirty-five degrees from the horizontal;

- (g) that the lessee shall not clear, burn off or cultivate or permit excessive grazing of the top twenty-five per cent of the hills (as measured vertically) which have a slope exceeding twenty-five degrees from the horizontal.

*Conditions of a lease for residential purposes*

26. A lease for residential purposes shall be subject to the following special conditions in addition to any other conditions which the Board in the circumstances of any case may see fit to impose:—

- (a) that the lessee shall within a specified number of years and under penalty of re-entry erect to the satisfaction of the lessor a dwelling-house on the demised land at such minimum expenditure or to such minimum specifications as may be specified in the lease;
- (b) that the lease shall not without the written consent of the lessor erect or permit to be erected more than one dwelling-house upon the demised land;
- (c) that the lessee shall not use or permit to be used the demised land or any part thereof or the dwelling-house or accessory outbuildings to be erected thereon, for any trade, business, occupation or calling whatsoever; and no act, matter or thing whatsoever shall, during the term of the lease, be done in or upon the said land or buildings or any part thereof, which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the occupier, lessee, or owner of the adjoining lands:

Provided that a home industry approved by the lessor in writing or a professional practice may with the written consent of the lessor first had and obtained be conducted within the dwelling-house;

- (d) that the lessee shall maintain and keep in good repair and tenable condition, to the satisfaction of the lessor, all buildings erected upon the demised land;
- (e) that the lessee shall not cover or permit to be covered with buildings more than one-third of the total area of the demised land.

*Conditions of lease for commercial purposes*

27. A lease for commercial purposes shall be subject to the following special conditions in addition to any other conditions which the Board in the circumstances of any case may see fit to impose:—

- (a) that the lessee shall within a specified number of years under penalty of re-entry erect to the satisfaction of the lessor a commercial building on the demised land at such minimum expenditure or to such minimum specifications as may be specified in the lease;
- (b) that the lessee shall maintain and keep in good repair and tenable condition, to the satisfaction of the lessor, all buildings erected upon the demised land;
- (c) that the lessee shall not cover or permit to be covered with buildings more than three-quarters of the area of the demised land;
- (d) that the lessee shall not, without the prior consent in writing of the lessor, carry on or permit to be carried on in or upon the demised land any offensive trade or business as defined in the Public Health Act.

*Conditions of lease for grazing purposes*

28. A lease for grazing purposes shall be subject to the following special conditions in addition to any other conditions which the Board in the circumstances of any case may see fit to impose:—

- (a) that the lessee shall within a specified number of years and under penalty of re-entry effect to the satisfaction of the lessor such permanent improvements, which shall include fencing, as may be specified in the lease;
- (b) that if the Board is satisfied during any period of the lease that any portion of the land is being used for agricultural purposes otherwise than for growing crops for the use of stock or persons employed upon the land the Board shall have the right to reassess the rent of the land so used subject to penalty of re-entry should the lessee not accept such reassessment of rent;
- (c) that the lessee shall stock the land at a minimum rate of one head of cattle or five sheep or goats per sixty-four acres within the first five years of the lease and at a minimum rate of two head of cattle or ten sheep or goats per sixty-four acres within ten years of the date of commencement of the lease and that the land shall be kept stocked as last aforesaid for the remainder of the term;
- (d) that the lessee shall not clear, burn off, cultivate or permit uncontrolled grazing of the top twenty-five per cent of hills (as measured vertically) having a slope exceeding twenty-five degrees from the horizontal;
- (e) that the lessee shall apply such measures to check soil erosion as may be required by the lessor in writing and shall maintain those measures to the satisfaction of the lessor or of an officer appointed by the lessor in that behalf in writing. Such measures may include the restriction of grazing, terracing, construction of drains or dams and the construction of fences;
- (f) that the lessee shall not, without the prior consent of the lessor in writing, take, use or otherwise injure any forest tree growing upon the demised land except for the purpose of clearing the land for the planting of grass or of erecting fences or buildings incidental to the use of the land for grazing purposes.

*Conditions of lease for gardening purposes*

29. A lease for gardening purposes shall be subject to the following special conditions in addition to any other conditions which the Board in the circumstances of any case may see fit to impose:—

- (a) that the demised land shall be used solely as a nursery, vegetable or pleasure garden or orchard, as the case may be;
- (b) that the lessee shall manure the land and carry out any other measures, including green manuring and rotation of cropping, as may be specified in writing by the lessor, from time to time, to conserve the fertility of the soil;
- (c) that a fixed sum shall be expended by the lessee in permanent improvements which shall be such as the lessor may decide in each case within a specified number of years under penalty of re-entry.

*Conditions of lease for dairying purposes*

30. A lease for dairying purposes shall be subject to the following special conditions in addition to any other conditions which the Board in the circumstances of any case may see fit to impose:—

- (a) that the lessee shall within a specified number of years and under penalty of re-entry effect to the satisfaction of the lessor such permanent improvements, which shall include fencing, as may be specified in the lease;
- (b) that there shall be planted with grass at least seven acres or one-tenth of the area of the land suitable for grazing dairy stock (whichever is the lesser area) within the first five years of the lease; at least fifteen acres or one-fifth of such area (whichever is the lesser area) within the first ten years of the lease; at least thirty acres or two-fifths of such area (whichever is the lesser area) within fifteen years from the date of commencement of the lease; and that for the remainder of the term of the lease not less than the minimum area last specified shall be maintained in good order and use;
- (c) that all such areas planted in compliance with the provisions of paragraph (b) shall at all times be maintained free from weeds and undergrowth to the satisfaction of the lessor;
- (d) that the lessee shall not clear, burn off, cultivate or permit uncontrolled or excessive grazing of the top twenty-five per cent of hills (as measured vertically) having a slope exceeding twenty-five degrees from the horizontal;
- (e) that the lessee shall apply such measures to check soil erosion as may be required by the lessor in writing and shall maintain those measures to the satisfaction of the lessor or of an officer appointed by the lessor in that behalf in writing. Such measures may include the restriction of grazing, terracing, construction of drains or dams and the construction of fences;
- (f) that the lessee shall not, without the written consent of the lessor, use more than three-quarters of the area contained in the lease for general grazing purposes apart from dairying.

*Conditions of lease for tramway purposes*

31. A lease for tramway purposes shall be subject to the following special conditions in addition to any other conditions which the Board in the circumstances of any case may see fit to impose:—

- (a) that the lessee shall not erect on the demised land any building not incidental to the use of the land for tramway purposes;
- (b) that the owners and occupiers of adjacent lands shall have the right at all times to cross the tramway lines laid or constructed provided they do not hinder or obstruct the passage of trains thereon;
- (c) that the lessee shall form and maintain in good order to the satisfaction of the lessor during the currency of the lease, all level crossings and gates and such bridges as the public have the right to use;
- (d) that the lessee shall have the right at any time during the currency of the lease to remove the tramway lines and bridges connected therewith except any bridge or bridges that may connect portions of the public highway.

*Conditions of lease for quarrying purposes*

32. A lease for quarrying purposes shall be used solely for the removal of sand, commonstone, lime or other similar material and for the housing of the machinery and implements necessary therefore and the labourers employed thereon, and the royalty to be paid for such material and the manner of payment and the nature and value of the improvements required to be effected shall be set out in every such lease in detail.

*Conditions of lease for special purposes*

33. A lease for such special purposes as are not hereinbefore mentioned shall specify the purpose for which the land shall be used, the special conditions applicable thereto, and the nature and value of the improvements required to be effected thereon and shall include clauses specifying the frequency and method of reassessment of rent and the manner of its calculation.

*General conditions*

34. All leases shall be subject to the following conditions in so far as they are applicable to the circumstances of any case:—

(a) that fruit trees growing on the demised land shall not be cut down without the consent in writing of the lessor:

Provided that this stipulation may be deleted at the discretion of the lessor in leases for a period longer than twenty-one years;

(b) that any building erected by the lessee on the demised land shall be removable by the lessee within three months after the expiration of the lease:

Provided that—

- (i) before the removal of any building the lessee shall pay all rent owing by him, and shall perform or satisfy all his other obligations to the lessor in respect of the demised land;
- (ii) in the removal of any building the lessee shall not do any avoidable damage to any other buildings or other part of the demised land;
- (iii) immediately after the removal of any building the lessee shall make good all damage occasioned to any other building or other part of the demised land;
- (iv) the lessee shall not remove any building without giving one month's previous notice in writing to the lessor of his intention to remove it;
- (v) at any time before the expiration of the notice of removal, the lessor, by notice in writing given by him to the lessee, may elect to purchase any building comprised in the notice of removal and any building thus elected to be purchased shall be left by the lessee and shall become the property of the lessor who shall pay to the lessee the fair value thereof to an incoming lessee of the land;
- (vi) If the lessee applies for a renewal of the lease the provisions of paragraph (c) shall be deemed to cease to apply as from the date of application of the lessee for a renewal of the lease;

- (c) that the lessee shall bear, pay and discharge all existing and future rates, taxes, assessments, duties, impositions and outgoings whatsoever imposed or charged upon the demised land or upon the owner or occupier in respect thereof, landlord's property tax only excepted;
- (d) that the whole of any portion of the demised land used for the grazing of stock shall be enclosed with good and substantial fencing so that all stock kept upon the land shall at all times be adequately fenced in;
- (e) that the lessee shall not remove or dispose of by sale or otherwise any forest produce growing upon the demised land without the written consent of the lessor first had and obtained and subject to such conditions as to the payment of royalty or otherwise prescribed by the Native Land (Forest) Regulations as the lessor may direct;
- (f) that the lessee shall not alienate or deal with the demised land or any part thereof, whether by sale, transfer or sub-lease or in any other manner whatsoever without the consent in writing of the lessor first had and obtained:

Provided that nothing in this paragraph shall be taken to purport to require consent by the lessor to the mortgages referred to in the proviso to subsection (1) of section 12 of the Act;

- (g) that the lessee shall not subdivide the land without the written consent of the lessor first had and obtained and then only in accordance with a plan of subdivision approved by the lessor in writing;
- (h) that the lessee shall keep open and maintain in good condition all drains, ditches and water-courses upon or intersecting the land the subject of the lease, to the satisfaction of the lessor or the Commissioner;
- (i) that in the event of any breach by the lessee of any covenant or condition in the lease, the lessor may enter upon and take possession of the demised land or may at the discretion of the Board impose a penal rent in respect of such breach.