



## ANALYSIS

1.	Title Short Title	2.	Further covenants included or implied in leases
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1995-96, No. 35

An Act to amend the Property Law Act 1952

(17 December 1996)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Property Law Amendment Act 1995-96, shall be read together with and deemed part of the Property Law Act 1952 and shall come into force on the 1<sup>st</sup> day of January 1997.

2. Further covenants included or implied in leases - A new section 106A shall be inserted in the Act as follows:

“106A. Further covenants included or implied in leases - (1) In every lease of Native freehold land for the permitted use of a commercial or industrial business or enterprise there shall be included, and if not included, implied, the following covenants by the lessee, for himself, his executors, administrators and assigns –

- (a) that where commercially appropriate the lessee will pay to the lessor a goodwill payment at the commencement of the term of the lease;
- (b) that the lessee will pay to the lessor the greater of:
  - (i) a fair and reasonable ground rent; and
  - (ii) a percentage of the annual gross turnover of all or part of the activities of the business or enterprise for which the land is being utilised, such percentage to be negotiated between the parties;

Price \$1.50

- © that the ground rent payable by the lessee pursuant to the lease shall be reviewed at intervals of not more than five years, with the ground rent following review to be as agreed between the parties or failing agreement as determined by an independent arbitrator or by the High Court;
  - (d) that the lessee will give to the lessor reasonable opportunity to participate as shareholder on usual commercial terms in the business or enterprise for which the land is being utilised;
  - (e) that in the event of the sale or proposed sale of the business or enterprise for which the land is being utilised (including any sale or disposition of any shares in a company operating such business or enterprise which would alter the effective control of that company)-
    - (i) the lessee will give to the lessor the right of first refusal to take the assignment of the lessee's interest pursuant to the lease, or the transfer of the shares, on the terms of the proposed sale, and any such sale shall be deemed to be conditional on the non-exercise of the right of first refusal;
    - (ii) following settlement of the sale the lessee will pay to the lessor a percentage of the net sale proceeds of that enterprise or business and the lessor's entitlement pursuant to this subclause shall rank subsequent to any secured creditors and in priority to any unsecured creditors of the lessee.
- (2) This section applies:
- (a) to leases for a term commencing on or after the 1<sup>st</sup> day of January 1997; and
  - (b) to leases renewed or extended, pursuant to subsections 469(3) and 469(4) of the Cook Islands Act 1915 and its amendments, for a term commencing on or after the 1<sup>st</sup> day of January 1997; and
  - (c) with effect from 1 January 2007, to leases for a term commencing prior to 1 January 1997, which leases shall be varied to incorporate the covenants listed in subsection (1) of this section.

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This Act is administered by the Ministry of Justice.