

## **PART 10 – RECOGNITION AND ENFORCEMENT OF AWARDS**

### **59 Recognition and enforcement of an award**

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the court, shall be enforced subject to this section and section 60.
- (2) Any application for recognition and enforcement of an arbitral award shall be made no later than six years from the date of the award.
- (3) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof.
- (4) If the award is not made in the English language, the court may request the party to supply a translation thereof.

### **60 Grounds for refusing recognition or enforcement of an award**

- (1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused by the court only –
  - (a) at the request of the party against whom it is invoked, if that party furnishes to the court where recognition or enforcement is sought proof that –
    - (i) it was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
    - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
    - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;
    - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

- (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) if the court finds that—
  - (i) the subject matter of the dispute is not capable of settlement by arbitration under the laws of Tonga; or
  - (ii) the recognition or enforcement of the award would be contrary to public policy in Tonga.
- (2) If an application for setting aside or suspension of an award has been made to a court referred to in sub-section (1)(a)(v), the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

## **61 Evidence of awards and arbitration agreements**

- (1) In any proceedings in which a party seeks the enforcement of an award by virtue of this Part, he shall produce to the court –
  - (a) the duly authenticated original award or a duly certified copy; and
  - (b) the original arbitration agreement under which the award purports to have been made or a duly certified copy.
- (2) For the purpose of sub-section (1), an award shall be deemed to have been duly authenticated, and a copy of an award or agreement shall be deemed to have been duly certified, if –
  - (a) it purports to have been authenticated or certified, as the case may be, by the arbitrator or, where the arbitrator is a tribunal, by an officer of that tribunal, and it has not been shown to the court that it was not in fact so authenticated or certified; or
  - (b) it has been otherwise authenticated or certified to the satisfaction of the court.
- (3) If a document or part of a document produced under sub-section (1) is written in a language other than English, there shall be produced with the document a translation, in the English language, of the document or that part, as the case may be, certified to be a correct translation.
- (4) For the purposes of sub-section (3), a translation shall be certified by a diplomatic or consular agent to Tonga of the country in which the award was made or otherwise to the satisfaction of the court.
- (5) A document produced to a court in accordance with this section is, upon mere production, receivable by the court as *prima facie* evidence of the matters to which it relates.

## PART 11 – MISCELLANEOUS

### 62 Regulations

The Minister may with the consent of Cabinet make regulations for the proper and efficient administration of this Act.

Passed by the Legislative Assembly on **10<sup>th</sup>** day of **December** 2020.