



# INTERNATIONAL ARBITRATION ACT 2020

Act 21 of 2020

## AN ACT TO MAKE PROVISION FOR ARBITRATION, THE RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS AND RELATED MATTERS

I assent,  
TUPOU VI,  
25<sup>th</sup> February 2021.

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the  
Legislature of the Kingdom as follows:

### PART I - PRELIMINARY

#### 1 Short Title and Commencement

- (1) This Act may be cited as the International Arbitration Act 2020.
- (2) This Act shall come into force on the date of gazettal.

#### 2 Interpretation

- (1) In this Act, unless the context otherwise requires –
  - “**arbitration**” means any arbitration whether or not administered by a permanent arbitral institution;
  - “**arbitration agreement**” means an arbitration agreement defined under section 8;

“**arbitral tribunal**” means a sole arbitrator, a panel of arbitrators or an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties;

“**award**” means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award;

“**court**” means the Supreme Court of Tonga;

“**data message**” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

“**electronic communication**” means any communication that the parties make by means of data messages;

“**Minister**” means the Minister responsible for commerce;

“**New York Convention**” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958);

“**party**” means a party to an arbitration agreement, or, in any case where an arbitration does not involve all of the parties to the arbitration agreement, means a party to the arbitration;

“**place of business**” means –

- (a) if a party has more than one place of business, the place of business which has the closest relationship to the arbitration agreement; or
  - (b) if a party does not have a place of business, the party’s habitual residence;
- (2) Where a provision of this Act, except section 46, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorise a different party, including an institution, to make that determination.
  - (3) Where a provision of this Act refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.
  - (5) Where a provision of this Act, other than in sections 41 (a) and 52 (2) (a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counterclaim.

### 3 Act binds the Crown

This Act binds the Crown.

## PART 2 – GENERAL PROVISIONS

### 4 Scope of application

- (1) This Act shall apply to international commercial arbitration.
- (2) The provisions of this Act, except sections 9, 11, 29, 30, 31, 59, 60 and 61 shall apply only if the place of arbitration is Tonga.
- (3) An arbitration is international if –
  - (a) the parties to an arbitration agreement have, at the time of the execution of that agreement, their place of business is located in different countries; or
  - (b) one of the following places is situated outside the country in which the parties have their place of business –
    - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement; or
    - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
  - (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.
- (4) This Act shall not affect any other law of Tonga by virtue of which certain disputes shall not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Act.

### 5 Purposes of the Act

The purposes of this Act are –

- (a) to facilitate the fair resolution of disputes by arbitration without unnecessary delay or expense;
- (b) to provide for the recognition and enforcement of arbitral awards; and
- (c) to give effect to Tonga's obligations under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958.

### 6 Receipt of written communications

- (1) Unless otherwise agreed by the parties, any written communication is deemed to have been received if it is delivered to –
  - (a) the addressee personally;
  - (b) his place of business;