

- (5) A party is not precluded from raising a plea under sub-section (4) by the fact that he has appointed, or participated in the appointment of, an arbitrator.
- (6) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged is raised during the arbitral proceedings.
- (7) The arbitral tribunal may admit a later plea if it considers the delay justified.
- (8) The arbitral tribunal may rule on a plea either as a preliminary question or in an award on the merits.
- (9) If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within 30 days after having received notice of that ruling, the court to decide the matter which decision shall be subject to no appeal.

20 Powers relating to conduct of arbitral proceedings

Unless the parties agree otherwise, the parties shall be taken as having agreed that the powers conferred upon the arbitral tribunal include the power to —

- (a) order the provision of further particulars in a statement of claim or statement of defence;
- (b) order the giving of security for costs;
- (c) fix and amend time limits within which various steps in the arbitral proceedings must be completed;
- (d) order the discovery and production of documents or materials within the possession or power of a party;
- (e) order the answering of interrogatories; and
- (f) order any party to do all such other things during the arbitral proceedings as may reasonably be needed to enable an award to be made properly and efficiently.

PART 6 – INTERIM MEASURES AND PRELIMINARY ORDERS

21 Power of arbitral tribunal to order interim measures

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.
- (2) For the purposes of this Part, “interim measures” means any temporary measure.
- (3) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to –

- (a) maintain or restore the status quo pending determination of the dispute;
- (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
- (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) preserve evidence that may be relevant and material to the resolution of the disputes.

22 Conditions for granting interim measures

- (1) The party requesting an interim measure under section 21 (2) (a), (b) and (c) shall satisfy the arbitral tribunal that –
 - (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.
- (2) A determination under sub-section (1) (b) shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- (3) Where there is a request for an interim measure under section 21(2)(d), the requirements in sub-section (1) (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

23 Applications for preliminary orders and conditions for granting preliminary orders

- (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- (3) The conditions defined under section 22 apply to any preliminary order, provided that the harm to be assessed under section 22 (1) (a), is the harm likely to result from the order being granted or not.

24 Specific regime for preliminary orders

- (1) After the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall immediately give notice to all parties of –
 - (a) the request for the interim measure;
 - (b) the application for the preliminary order;
 - (c) the preliminary order, if any; and
 - (d) all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.
- (2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
- (3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.
- (4) A preliminary order shall expire after 20 days from the date on which it was issued by the arbitral tribunal.
- (5) The arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.
- (6) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court.
- (7) A preliminary order does not constitute an award.

25 Modification, suspension and termination

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

26 Provision of security

- (1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
- (2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

27 Disclosure

- (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.
- (2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case.
- (3) Sub-section (1) shall apply after a party has met the requirements under sub-section (2).

28 Costs and damages

- (1) The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted.
- (2) The arbitral tribunal may award such costs and damages at any point during the proceedings.

29 Recognition and enforcement of an interim measure

- (1) An interim measure issued by an arbitral tribunal, irrespective of the country in which it was issued, shall be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the court, subject to section 30.
- (2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.
- (3) The court where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

30 Grounds for refusing recognition or enforcement of an interim measure

- (1) Recognition or enforcement of an interim measure may be refused only –
 - (a) at the request of the party against whom it is invoked if the court is satisfied that –
 - (i) such refusal is warranted on the grounds set forth in section 60(1)(a)(i) - (iv); or

- (ii) the arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
 - (iii) the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the country in which the arbitration takes place or under the law of which that interim measure was granted; or
- (b) if the court finds that —
 - (i) the interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or
 - (ii) any of the grounds set forth in section 60 (1) (b) (i) or (ii), apply to the recognition and enforcement of the interim measure.
- (2) Any determination made by the court on any ground in sub-section (1) shall be effective only for the purposes of the application to recognise and enforce the interim measure.
- (3) The court shall not undertake a review of the substance of the interim measure when making a determination under sub-section (2).

31 Court ordered interim measures

The court shall apply its own rules when granting an interim measure, in relation to arbitration proceedings regardless of whether the place of arbitration is Tonga.

PART 7 – CONDUCT OF ARBITRAL PROCEEDINGS

32 Consolidation of proceedings and concurrent hearings

- (1) The parties are free to agree —
 - (a) that the arbitral proceedings shall be consolidated with other arbitral proceedings; or
 - (b) that concurrent hearings shall be held on such terms as may be agreed.
- (2) Unless the parties agree to confer such power on the tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.

33 Equal treatment of parties

The parties shall be treated equally and shall be given an opportunity to present his case.