

54 Additional award

- (1) A party may request the arbitral tribunal within 30 days of receipt of an award, unless otherwise agreed by the parties, to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- (2) If the arbitral tribunal considers the request under sub-section (1) to be justified, it shall make the additional award within 60 days.
- (3) The arbitral tribunal may extend, if necessary, the period of time within which it shall make an additional award under sub-section (2).

55 Costs of the arbitration

- (1) For the purposes of sections 56 and 57, “**costs of the arbitration**” means —
 - (a) the arbitrators’ fees and expenses;
 - (b) the fees and expenses of any arbitral institution concerned; and
 - (c) the legal or other costs of the parties.
- (2) Any such reference includes the costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration.

56 Agreement to pay costs in any event

An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.

57 Award of costs

- (1) The arbitral tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.
- (2) Unless the parties otherwise agree, the tribunal shall award costs on the general principle that costs should follow the event except where it appears to the tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

PART 9 – RECOURSE AGAINST AWARD

58 Application for setting aside as exclusive recourse against arbitral award

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with sub-sections (2) and (3).

- (2) An arbitral award may be set aside by the court only if –
- (a) the party making the application furnishes proof that –
- (i) a party to the arbitration agreement referred to in section 8 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 laws of Tonga;
 - (ii) the party making the application 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 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, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or
- (b) 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 award is contrary to public policy in Tonga.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under sections 53 and 54, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

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