

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;

- (c) habitual residence; or
 - (d) mailing address.
- (2) If delivery cannot be effected according to sub-section (1) after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to –
 - (a) the addressee's last known place of business;
 - (b) habitual residence;
 - (c) mailing address by registered letter; or
 - (d) any other means which provides a record of the attempt to deliver it.
- (3) A written communication is deemed to have been received on the day it is so delivered.

7 Waiver of right to object

A party who knows that any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

PART 3 – ARBITRATION AGREEMENT

8 Arbitration agreement

- (1) An arbitration agreement is –
 - (a) an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;
 - (b) may be in the form of an arbitration clause in a contract or in the form of a separate agreement; and
 - (c) shall be in writing.
- (2) An arbitration agreement is in writing if –
 - (a) its content is recorded in any form; and
 - (b) it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (3) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.