



**Tuvalu**

# **ARBITRATION ACT**

**2008 Revised Edition**

**CAP. 7.04**





Tuvalu

## ARBITRATION ACT

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Tuvalu

## ARBITRATION ACT

### AN ACT TO MAKE PROVISION WITH RESPECT TO ARBITRATION AND CONNECTED MATTERS.<sup>1</sup>

Commencement [1st February 1992]<sup>2</sup>

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#### 1 Short title

This Act may be cited as the Arbitration Act.

#### 2 Interpretation

In this Act, unless the context otherwise requires, the expression “**arbitration agreement**” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

#### 3 Authority

The authority of an arbitrator or umpire of arbitrators appointed by or by virtue of an arbitration irrevocable agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except by leave of the High Court.

#### 4 Death of a party

- (1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.
- (2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

- (3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

## **5 Staying court proceedings where there is submission to arbitration**

- (1) If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings to any court against any other party to the arbitration agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings.
- (2) Where an application is made to a court under subsection (1), the court, if satisfied that —
- (a) there is no sufficient reason why the matter should not be referred in accordance with the agreement; and
  - (b) the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration,
- may make an order staying the proceedings.
- (3) Where —
- (a) relief by way of interpleader is granted; and
  - (b) it appears to the High Court that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, applies,
- the High Court may direct the issue between the claimants to be determined in accordance with the agreement.

## **ARBITRATORS AND UMPIRES**

### **6 When reference is to a single arbitrator**

Unless a contrary intention is expressed therein, every arbitration agreement shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator.

### **7 Power of parties to supply vacancy**

- (1) Where an arbitration agreement provides that the reference shall be to 2 arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein —

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
  - (b) if, on such a reference, one party fails to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for 30 clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent.
- (2) The High Court may set aside any appointment made in pursuance of this section.

## **8 Umpires**

- (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to 2 arbitrators, be deemed to include a provision that the 2 arbitrators shall appoint an umpire immediately after they are themselves appointed.
- (2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to include a provision that if the arbitrators have delivered to any party to the arbitration agreement, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
- (3) At any time after the appointment of an umpire, however appointed, the High Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

## **9 Agreements for three arbitrators**

- (1) Where an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.
- (2) Where an arbitration agreement provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1), the award of any two of the arbitrators shall be binding.

**10 Power of court to appoint arbitrator, etc.**

In any of the following cases —

- (a) where an arbitration agreement provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) if an appointed arbitrator refuses or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;
- (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him, or where two arbitrators are required to appoint an umpire and do not appoint him;
- (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint or, as the case may be, concur in appointing, an arbitrator, umpire or third arbitrator, and if the appointment is not made within thirty clear days after the service of the notice, the High Court may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

**CONDUCT OF PROCEEDINGS, WITNESSES, ETC.****11 Conduct of proceedings, witnesses, etc.**

- (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection —
  - (a) submit to be examined by the arbitrator or umpire, on oath or affirmation, in relation to the matters in dispute;
  - (b) produce before the arbitrator or umpire all documents within their possession or power respectively which may be required or called for; and
  - (c) do all other things which during the proceedings on the reference the arbitrator or umpire may require.
- (2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to



contain a provision that the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

- (3) An arbitrator or umpire shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmations of, the parties to and witnesses on a reference under the agreement.
- (4) Any party to a reference under an arbitration agreement may issue out a writ of subpoena *ad testificandum* (to testify as a witness) or a writ of subpoena *duces tecum* (to produce documents), but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action, and the High Court may order that a writ of subpoena *ad testificandum* or of subpoena *duces tecum* shall issue to compel the attendance before an arbitrator or umpire of a witness wherever he may be within Tuvalu.
- (5) The High Court may also order that a writ of habeas corpus *ad testificandum* (to produce a prisoner to testify as a witness) shall issue to bring up a prisoner for examination before an arbitrator or umpire.
- (6) The High Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of —
  - (a) security for costs;
  - (b) discovery of documents and interrogatories;
  - (c) the giving of evidence by affidavit;
  - (d) examination on oath of any witness before an officer of the High Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction;
  - (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;
  - (f) securing the amount in dispute in the reference;
  - (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of those purposes any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and
  - (h) interim injunctions or the appointment of a receiver,as it has for the purpose of and in relation to an action or matter in the High Court.

- (7) Nothing in subsection (6) shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters mentioned in that subsection.

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## PROVISIONS AS TO AWARDS

### 12 Time for making award

- (1) Subject to section 21(2) and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.
- (2) The time, if any, limited for making an award, whether under this Act or otherwise, may from time to time be enlarged by order of the High Court, whether that time has expired or not.
- (3) The High Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and the High Court may order that an arbitrator or umpire who is removed by the High Court under this subsection shall not be entitled to receive any remuneration in respect of his services.
- (4) For the purposes of subsection (3), the expression “proceeding with a reference” includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

### 13 Interim awards

Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, make an interim award, and any reference in this Act to an award includes a reference to an interim award.

### 14 Specific performance

Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire shall have the same power as the High Court to order specific performance of any contract other than a contract relating to land or any interest in land.

### 15 Awards to be final

Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that subject to sections 20, 21, and 22 the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively.

**16 Power to correct slips**

Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

**COSTS, FEES AND INTEREST****17 Costs**

- (1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may —
  - (a) direct to and by whom and in what manner those costs or any part thereof shall be paid;
  - (b) tax or settle the amount of costs to be so paid or any part thereof; and
  - (c) award costs to be paid as between solicitor and client.
- (2) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable in the High Court.
- (3) Any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void and this Act shall, in the case of an arbitration agreement containing any such provision, have effect as if that provision were not contained therein.
- (4) Nothing in subsection (3) shall invalidate a provision referred to therein when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.
- (5) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within 14 days of the publication of the award or such further time as the High Court may direct, apply to the arbitrator for an order directing by and to whom those costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

**18 Arbitrator's fee**

- (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the High Court may, on an application for the purpose, order that —
  - (a) the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded;
  - (b) the fees demanded shall be taxed by the taxing officer;

- (c) out of the money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation, and the balance of the money, if any, shall be paid out to the applicant.
- (2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.
- (3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.
- (4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

## **19 Interest on awards**

A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

## **SPECIAL CASES, REMISSION AND SETTING ASIDE OF AWARDS, ETC.**

## **20 Statement of case**

- (1) An arbitrator or umpire may, and shall if so directed by the High Court, state —
  - (a) any question of law arising in the course of the reference; or
  - (b) an award or any part of an award,in the form of a special case for the decision of the High Court.
- (2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the High Court to be stated, notwithstanding that proceedings under the reference are still pending.
- (3) No appeal shall lie from the decision of the High Court on any case stated under paragraph (a) of subsection (1) without the leave of the High Court or of the Court of Appeal.

## **21 Power to remit**

- (1) In all cases of reference to award arbitration the High Court may from time to time remit the matters referred, or any part of them, to the reconsideration of the arbitrator or umpire.

- (2) Where an award is remitted, the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

## **22 Court relief for misconduct**

- (1) Where an arbitrator or umpire has misconducted himself or the proceedings, the High Court may remove him.
- (2) Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the High Court may set the award aside.
- (3) Where an application is made to set aside an award, the High Court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

## **23 Court relief for partiality and in fraud**

- (1) Where —
  - (a) an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement; and
  - (b) after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration,

it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality.

- (2) Where —
  - (a) an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration; and
  - (b) a dispute which so arises involves the question whether any such party has been guilty of fraud,

the High Court shall, so far as may be necessary to enable that question to be determined by the High Court, have power —

- (i) to order that the agreement shall cease to have effect; and
- (ii) to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

- (3) In any case where by virtue of this section the High Court has power —
- (i) to order that an arbitration agreement shall cease to have effect; or
  - (ii) to give leave to revoke the authority of an arbitrator or umpire, the High Court may refuse to stay any action brought in breach of the agreement.

## **24 Court powers where arbitrator removed or authority revoked**

- (1) Where an arbitrator (not being a sole arbitrator), or two or more arbitrators (not being all the arbitrators), or an umpire who has not entered on the reference is or are removed by the High Court, the High Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.
- (2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the High Court., or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the High Court, the High Court may, on the application of any party to the arbitration agreement, either —
- (a) appoint a person to act as sole arbitrator in place of the person or persons removed; or
  - (b) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.
- (3) A person appointed under this section by the High Court as an Arbitrator or an umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.
- (4) Where it is provided (whether by means of a provision in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the High Court, if it orders (whether under this section or under any other enactment) that the agreement shall have ceased to have effect as regards any particular dispute, further order that the provisions making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

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## ENFORCEMENT OF AWARD

### 25 Enforcement of Award

An award on an arbitration agreement may, by leave of the High Court, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

## MISCELLANEOUS

### 26 Extension of time for arbitration

Where —

- (a) the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless —
  - (i) notice to appoint an arbitrator is given;
  - (ii) an arbitrator is appointed; or
  - (iii) some other step to commence arbitration proceedings is taken within a time fixed by the agreement; and
- (b) a dispute arises to which the agreement applies,

the High Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, but without prejudice to the provisions of any enactment limiting the time for the commencement of arbitration proceedings, extend the time for such period as it thinks proper.

### 27 Terms as to costs, etc.

Any order made under this Act may be made on such terms as to costs or otherwise as the authority making the order thinks just.

### 28 Crown to be bound

This Act applies to any arbitration to which the Crown is a party.

**29 Statutory arbitrations**

- (1) This Act, except the provisions thereof specified in subsection (2), shall apply to every arbitration under any other Act as if the arbitration were pursuant to an agreement and as if that other Act were an arbitration agreement, except in so far as this Act is inconsistent with that other Act or with any rules or procedure authorised or recognised thereby.
- (2) The provisions referred to in subsection (1) are sections 4(1), 5(3), 17(3) and (4), 23, 24, and 26.



**ENDNOTES**

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<sup>1</sup> Act 11 of 1991

Note also that with regard to International Arbitrations, the Arbitration (International Investment Disputes) Act 1966 (Application to Colonies Etc.) Order 1967 (S.I. 1967/159) extended the provisions of the said Act to various territories. The Act implements a Convention signed at Washington on 18th March 1975 on the settlement of investment disputes between States and nationals of other States.

<sup>2</sup> GN 10/1992