

Dika 39/2020.



Tonga

**LAO FAKAANGAANGA KI HE
FAKATONUTONU
FAKAVAHA'APULE'ANGA 2020**

Table Unit

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Table Unit



LAO FAKAANGAANGA KI HE FAKATONUTONU FAKAVAHA'APULE'ANGA 2020

KO E LAO FAKAANGAANGA KI HA LAO KE TU'UTU'UNI KI HE
FAKATONUTONU, TALI MO HONO FAKAHOKO 'O E NGAHI
TU'UTU'UNI FAKATONUTONU MO E NGAHI ME'A FELAVE'I

'OKU TU'UTU'UNI 'e he Tu'i mo e Fale Alea 'o Tonga 'i he Fakataha Alea 'o e
Pule'anga 'o pehe:

KONGA 1 - TALATEU

1 Hingoa Nounou mo e Kamata Ngaue'aki

- (1) 'E ui 'a e Lao ni ko e Lao ki he Fakatonutonu Fakavaha'apule'anga 2020.
- (2) Kuo pau ke kamata ngaue'aki 'a e Lao ni 'i he 'aho 'o e kasete.

2 'Uhinga'i Lea

- (1) 'I he Lao ni, tuku kehe ka fiema'u ha 'uhinga kehe 'i hono tu'unga –

“fakatonutonu” ‘oku ‘uhinga ki ha fakatonutonu ‘o tatau pe ‘oku pule’i ‘e ha sino fakatonutonu tu’uma’u pe ‘ikai;

“aleapau fakatonutonu” ‘oku ‘uhinga ki he aleapau fakatonutonu ‘oku faka’uhinga’i ‘i he kupu 8;

“fakamaau’anga fakatonutonu” ‘oku ‘uhinga ki ha taha fakatonutonu, ha penolo ‘o e kau fakatonutonu pe ha taha fakatonutonu fakafokifa kuo fokotu’u ‘o fakatatau ki he ngaahi tu’utu’uni fakatonutonu kuo felotoi ki ai pe ngaue’aki ‘e he ngaahi fa’ahi;

“tu’utu’uni” ‘oku ‘uhinga ki ha tu’utu’uni ‘a e fakamaau’anga fakatonutonu ‘i he tu’unga ‘o e maumau pea kau ki ai ha tu’utu’uni fakataimi, kimu’a ‘a e hopo (interlocutory) pe fakakonga (partial);

“fakamaau’anga” ‘oku ‘uhinga ki he Fakamaau’anga Lahi ‘o Tonga;

“fakamatala teita (data message)” ‘oku ‘uhinga ki he fakamatala ‘oku fa’u, ‘oatu, ma’u mai pe tauhi ‘aki ha founa faka’elekitulonika, fakamakinito, fakae’ata pe tatau mo ia, kau ki ai, kae ‘ikai fakangatangata ki he, fakafetongi fakamatala faka’elekitulonika (EDI), meili faka’elekitulonika, telekalama pe tatau telekalama (telecopy);

“fetu’utaki faka’elekitulonika” ‘oku ‘uhinga ki ha fetu’utaki ‘oku fakahoko ‘e he ngaahi fa’ahi ‘aki ‘a e founa ‘o e fakamatala teita (data message);

“Minisita” ‘oku ‘uhinga ki he Minisita ‘oku ne tokangaekina ‘a e fefakatau’aki;

“Konivesio New York” ‘oku ‘uhinga ki he Konivesio ki hono Tali mo e Fakahoko ‘o e Ngaahi Tu’utu’uni Fakatonutonu Muli (1958);

“fa’ahi” ‘oku ‘uhinga ki ha fa’ahi ‘o ha aleapau fakatonutonu, pe, kapau ‘oku ‘ikai kau atu ki he fakatonutonu ‘a e kotoa ‘o e ngaahi fa’ahi ki he aleapau fakatonutonu, ‘oku ‘uhinga ki ha fa’ahi ki he fakatonutonu;

“feitu’u ‘o e pisinisi” ‘oku ‘uhinga ki he —

- (a) kapau ‘oku lahi hake ‘i he taha ‘a e feitu’u ‘o e pisinisi ‘o ha fa’ahi, ko e feitu’u ‘o e pisinisi ‘a ia ‘oku felave’i tonu ange ki he aleapau fakatonutonu; pe
- (b) kapau ‘oku ‘ikai ke ‘i ai ha feitu’u ‘o e pisinisi ‘o ha fa’ahi, ko e nofo’anga angamaheni ‘o e fa’ahi ko ia;
- (2) Ka ‘i ai ha kupu ‘i he Lao ni, tuku kehe ‘a e kupu 46, ‘oku ne ‘oatu ki he ongo fa’ahi ‘a e tau’ataina ke tu’utu’uni ki ha me’a tefito, ko e tau’ataina ko ia ‘oku kau ki ai ‘a e totonu ‘o e ngaahi fa’ahi ke fakamafai ha fa’ahi kehe, ‘o kau ai ha sino, ke fakahoko ‘a e tu’utu’uni ko ia.
- (3) Ka ‘i ai ha kupu ‘i he Lao ni ‘oku felave’i ki he felotoi ‘a e ongo fa’ahi pe ‘amanaki ke nau felotoi pe felave’i ki ha aleapau ‘o e ngaahi fa’ahi ‘i ha founa kehe ange, ‘oku kau ki he aleapau ko ia ha ngaahi tu’utu’uni fakatonutonu ‘oku ngaue’aki ‘i he aleapau ko ia.

- (4) Ka 'i ai ha kupu 'i he Lao ni, kehe ange mei he ngaahi kupu 41 (a) mo e 52 (2) (a), 'o felave'i ki ha 'eke, 'oku toe ngaue'aki ia ki ha 'eke fakafoki, pea ko e lau ki ha taukapo, 'oku toe ngaue'aki ia ki ha taukapo 'o e 'eke fakafoki ko ia.

3 Lao ke ne ha'i 'a e Kalauni

'Oku ha'i 'e he Lao ni 'a e Kalauni.

KONGA 2 – NGAahi KUPU FAKALUKUFUA

4 Ngaue'aki

- (1) Kuo pau ke ngaue'aki 'a e Lao ni ki ha fakatonutonu fakakomesiale fakavaha'apule'anga.
- (2) Kuo pau ke toki ngaue'aki pe 'a e ngaahi kupu 'o e Lao ni kapau ko e feitu'u fakatonutonu ko Tonga, tuku kehe 'a e ngaahi kupu 9, 11, 29, 30, 31, 59, 60 mo e 61.
- (3) 'Oku fakavaha'apule'anga ha fakatonutonu kapau –
- (a) ko e ngaahi fa'ahi ki ha aleapau fakatonutonu, 'i he taimi 'oku fakahoko ai 'a e aleapau ko ia, 'oku 'i he ngaahi fonua kehekehe honau ngaahi feitu'u 'o e pisinisi; pe
- (b) ko e taha 'o e ngaahi feitu'u ko eni 'oku ha atu 'oku tu'u 'i muli 'a ia 'oku 'i ai 'a e feitu'u 'o e pisinisi 'o e ngaahi fa'ahi –
- (i) ko e feitu'u 'o e fakatonutonu kapau na'e fakamahino 'i he, pe fakatatau ki he, aleapau fakatonutonu; pe
- (ii) ha feitu'u 'a ia 'e fakahoko ai ha konga lahi 'o e ngaahi fatongia 'o e va fakakomesiale pe ko e feitu'u 'a ia 'oku fehokotaki vaofi taha mo e kaveinga 'o e maumau; pe
- (c) kuo felotoi mahino 'a e ngaahi fa'ahi ko e kaveinga 'o e aleapau fakatonutonu 'oku felave'i ia mo ha fonua 'oku lahi hake 'i he taha.
- (4) Kuo pau 'e 'ikai uestia 'e he Lao ni ha lao kehe 'o Tonga, koe'uhi ko e maumau 'e ni'ihi 'a ia kuo pau ke 'ikai fakahu atu ki he fakatonutonu pe 'e ngofua ke fakahu atu ki he fakatonutonu, 'o fakatatau pe ki he ngaahi kupu kehe ange mei he ngaahi tu'utu'uni ko ia 'o e Lao ni.

5 Ngaahi taumu'a 'o e Lao ni

Ko e ngaahi taumu'a 'o e Lao ni ke –

- (a) fakahoko ha fakalelei taau 'o e ngaahi maumau 'aki 'a e fakatonutonu 'o 'ikai ha toloi pe fakamole 'oku 'ikai 'aonga;

- (b) tu'utu'uni ki hono tali mo e fakahoko 'o e ngaahi tu'utu'uni fakatonutonu; pea
- (c) fakahoko 'a e ngaahi fatongia 'o Tonga ki he Konivesio ki hono Tali mo e Fakahoko 'o e Ngaahi Tu'utu'uni Fakatonutonu Muli na'e fakahoko 'i he 1958.

6 Ma'u 'o e ngaahi fetu'utaki tohi

- (1) Tukekehe ha felotoi kehe 'a e ngaahi fa'ahi, 'oku lau kuo ma'u ha fetu'utaki tohi kapau 'oku tuku atu ki he –
 - (a) taha 'oku fakatu'asila ki ai;
 - (b) feitu'u 'o e pisinisi 'o'ona;
 - (c) nofo'anga angamaheni; pe
 - (d) tu'asila meili.
- (2) Kapau 'oku 'ikai malava ke tuku atu 'o fakatatau ki he kupu si'i (1) hili hano fakahoko ha faka'eke'eke fakapotopoto, 'e lau kuo ma'u ha fetu'utaki tohi kapau 'oku tufa ki he –
 - (a) tu'asila 'o e feitu'u 'o e pisinisi fakamuimui taha 'oku 'ilo'i 'o e taha 'oku fakatu'asila ki ai;
 - (b) nofo'anga angamaheni;
 - (c) tu'asila meili 'i ha tohi kuo lesisita; pe
 - (d) ha ngaahi founga kehe 'oku fakaha ai ha lekooti 'o e feinga ke tuku atu ia.
- (3) 'Oku lau kuo ma'u ha fetu'utaki tohi 'i he 'aho ko ia na'e tuku atu ai.

7 Tukuange 'o e totonu ke launga

Ko e fa'ahi 'oku ne 'ilo ha kupu 'o e Lao ni 'a ia 'e ala mavahe mei ai 'a e ngaahi fa'ahi pe ha tu'utu'uni 'i he aleapau fakatonutonu kuo 'ikai ke faipau ki ai pea kei fakahoko pe 'a e fakatonutonu 'o 'ikai fakaha 'ene launga ki he 'ikai faipau ko ia 'o 'ikai ha toloi ta'e'uhinga pe, kapau kuo fakaha ha taimi fakangatangata ki ai, 'i loto 'i he vaha'a taimi ko ia, kuo pau ke lau 'oku tukuange 'e ha fa'ahi 'ene totonu ke launga.

KONGA 3 – ALEAPAU FAKATONUTONU

8 Aleapau Fakatonutonu

- (1) Ko e aleapau fakatonutonu –
 - (a) ko ha aleapau 'a e ngaahi fa'ahi ke fakahu atu ki he fakatonutonu 'a e kotoa pe ni'ihii 'o e ngaahi maumau kuo hoko pe 'e ala hoko 'i honau va

- 'o fekau'aki mo ha va fakalao kuo fakamahino, 'o tatau pe 'oku 'i he aleapau pe 'ikai;
- (b) 'e ngofua ke 'i he fotunga 'o ha tu'utu'uni fakatonutonu 'i ha aleapau pe 'i ha founa 'o ha aleapau makehe; pea
- (c) kuo pau ke 'i he tohi.
- (2) 'Oku fakahoko 'a e aleapau fakatonutonu 'i he tohi kapau –
- (a) kuo lekooti hono kakano 'i ha fa'ahinga fotunga; pea
- (b) 'oku ha 'i he ngaahi tohi 'eke mo e taukapo 'a ia kuo fakafetongi, 'a ia 'oku tukuaki 'i 'oku 'i ai 'a e aleapau 'e he fa'ahi 'e taha pea 'ikai faka'ikai' 'e he fa'ahi 'e taha.
- (3) 'Oku fakakakato 'e he fetu'utaki faka'elekitulonika 'a e tu'utu'uni ke fakahoko 'a e aleapau fakatonutonu 'i he tohi kapau 'oku 'ataa 'a e fakamatala 'oku 'i ai koe'uhi ke ala ngaue'aki 'i ha lave 'amui ange ki ai.
- (4) Ko e lave 'i ha aleapau ki ha tohi ngaue 'oku 'i ai hano tu'utu'uni fakatonutonu 'oku fokotu'u ia ko e aleapau fakatonutonu 'i he tohi, ka kuo pau ko e lave ko ia 'oku fakataumu'a ke fakahoko 'a e tu'utu'uni ko ia ko ha konga 'o e aleapau.

9 Aleapau fakatonutonu mo e tefito'i 'eke 'i he fakamaau'anga

- (1) Kuo pau ki he fakamaau'anga, 'a ia 'oku 'ave ki ai ha faka'ilo 'o ha me'a 'a ia ko e kaveinga 'o ha aleapau fakatonutonu, kapau 'e kole ia 'e ha fa'ahi 'o 'ikai tomui ange 'i he taimi hono fakahu atu 'o 'ene fuofua fakamatala fekau'aki mo e tefito 'o e maumau, ke ne tuku atu 'a e ngaahi fa'ahi ki he fakatonutonu tuku kehe kapau 'oku ne pehe 'oku ta'e'aonga pea 'ikai fakalao 'a e aleapau, 'ikai ngaue pe 'ikai malava ke fakahoko.
- (2) Kapau kuo fakahoko ha faka'ilo 'a ia 'oku lave ki ai 'i he kupu si'i (1), 'e kei ngofua pe ke kamata pe hoko atu 'a e ngaahi hopo fakatonutonu, pea 'e ngofua ke fakahoko ha tu'utu'uni, lolotonga 'a e tatali 'a e me'a 'i he fakamaau'anga.
- (3) Kapau 'e 'ikai tali 'e he fakamaau'anga ke tuku atu 'a e ngaahi fa'ahi ki he fakatonutonu, kuo pau ko e kupu 'o e aleapau fakatonutonu ko e tu'utu'uni ko e makatu'unga ia kimu'a hono 'oatu 'o e ngaahi fakatonutonu fakalao 'o fekau'aki mo ha me'a, ke fakata'e'aonga'i ia 'i he'ene felave'i mo e ngaahi fakatonutonu.
- (4) Kapau 'e tuku atu 'e he fakamaau'anga 'a e ngaahi fa'ahi ki he fakatonutonu 'i he kupu si'i (1), kuo pau ke ne fakahoko ha tu'utu'uni 'o ta'ofi 'a e ngaahi fakatonutonu fakalao 'i he hopo ko ia.

10 Pekia, mo'ua hulu 'ikai lava ke totongi pe tamate'i 'o ha fa'ahi ki he aleapau fakatonutonu

- (1) Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, kuo pau 'e 'ikai tukuange ha fakatonutonu 'aki ha pekia, mo'ua hulu 'ikai lava ke totongi pe tamate'i 'o ha fa'ahi, pea 'e ngofua ke fakahoko 'e he pe ki he kau fakafongong 'o e fa'ahi ko ia.
- (2) 'Oku 'ikai uesia 'e he kupu si'i (1) 'a e ngaue 'a e lao 'a ia 'oku tamate'i 'a e makatu'unga 'o e 'eke 'i he pekia ha taha.

11 Aleapau fakatonutonu mo e ngaahi ngaue fakataimi 'a e fakamaau'anga

'Oku 'ikai ke faikehekehe mo ha aleapau fakatonutonu ke kole 'e ha fa'ahi mei ha fakamaau'anga, kimu'a pe lolotonga ha ngaahi hopo fakatonutonu, ha ngaue malu'i fakataimi pea ke foaki 'e he fakamaau'anga 'a e ngaue ko ia.

**KONGA 4 – FA'UNGA 'O E FAKAMAAU'ANGA
FAKATONUTONU****12 Tokolahi 'o e kau fakatonutonu**

'Oku tau'ataina 'a e ngaahi fa'ahi ke tu'utu'uni 'a e tokolahi 'o e kau fakatonutonu pea 'i he 'ikai fakahoko ha tu'utu'uni pehe, kuo pau ke toko tolu 'a e tokolahi 'o e kau fakatonutonu.

13 Fokotu'u 'o e kau fakatonutonu

- (1) Kuo pau 'e 'ikai ta'ofi ha taha mei ha'ane hoko ko ha taha fakatonutonu koe'uhi ko hono tangata'i fonua, tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi.
- (2) 'Oku tau'ataina 'a e ngaahi fa'ahi ke felotoi ki he ngaahi tu'utu'uni ngaue ki hono fokotu'u 'o e taha fakatonutonu pe kau fakatonutonu, 'o fakatatau ki he ngaahi kupu 'o e kupu si'i (4) mo e (5).
- (3) Kapau 'e 'ikai fakahoko 'a e felotoi ko ia 'i he kupu si'i (2) –
 - (a) 'i ha fakatonutonu 'oku 'i ai ha kau fakatonutonu 'e toko tolu, kuo pau ke fokotu'u 'e he fa'ahi taki taha ha taha fakatonutonu 'e taha, pea ko e ongo fakatonutonu 'e toko ua kuo fokotu'u kuo pau ke na fokotu'u 'a e taha fakatonutonu hono tolu;
 - (b) kapau 'e 'ikai fokotu'u 'e ha fa'ahi 'a e taha fakatonutonu 'i he palakalafi (a) 'i loto 'i he 'aho 'e 30 mei hono ma'u 'o ha kole mei he fa'ahi 'e taha ke fakahoko ia, pe 'ikai felotoi 'a e ongo fakatonutonu 'e toko ua ki he taha fakatonutonu hono tolu 'i loto 'i he 'aho 'e 30 'o hona fokotu'u, kuo

pau ke fakahoko 'a e fokotu'u, 'e he fakamaau'anga pe 'e ha ma'u mafai kehe, 'i hano kole 'e ha fa'ahi; pea

- (c) 'i ha fakatonutonu 'oku 'i ai ha taha fakatonutonu pe 'e taha, kapau 'e 'ikai lava ke felotoi 'a e ngaahi fa'ahi ki he taha fakatonutonu, kuo pau ke fokotu'u ia, 'e he fakamaau'anga pe 'e ha ma'u mafai kehe, 'i hano kole 'e ha fa'ahi.

- (4) Kapau, 'i ha tu'utu'uni ngaue fokotu'u kuo felotoi ki ai 'a e ngaahi fa'ahi –

- (a) 'oku 'ikai fakahoko 'e ha fa'ahi 'i hono tu'utu'uni 'i he tu'utu'uni ngaue ko ia; pe
(b) ko e ngaahi fa'ahi, pe ko e ongo fakatonutonu 'e toko ua, 'oku 'ikai lava ke na fakahoko 'a e felotoi kuo fiema'u meia kinaua 'i he tu'utu'uni ngaue ko ia; pe
(c) 'oku 'ikai fakahoko 'e ha fa'ahi hono tolu, kau ki ai ha sino, ha fatongia kuo 'oatu ki ai 'i he tu'utu'uni ngaue ko ia.

'e ngofua ke kole 'e ha fa'ahi ki he fakamaau'anga pe ha ma'u mafai kehe ke fakahoko 'a e ngaue 'e fiema'u, tuku kehe kapau 'oku tu'utu'uni 'e he felotoi ki he founga ngaue ki he fokotu'u ha founga kehe ki hono fakahoko 'o e fokotu'u.

- (5) Kuo pau ki he fakamaau'anga pe ma'u mafai kehe, 'i hono fokotu'u 'o ha taha fakatonutonu, ke vakai'i ki he ngaahi faka'ilonga 'oku fiema'u ki ha taha fakatonutonu 'i he felotoi ko ia 'a e ngaahi fa'ahi pea ki he ngaahi fiema'u ko ia 'oku fiema'u ke fakahoko 'a e fokotu'u 'o ha taha fakatonutonu tau'ataina mo 'ikai filifilimanako pea, kapau ko ha taha fakatonutonu pe 'e taha pe ko hono tolu, kuo pau ke fakakaukau 'i foki hono fiema'u ke fokotu'u 'o ha taha fakatonutonu 'o ha tangata 'i fonua kehe mei he tangata 'i fonua ko ia 'o e ngaahi fa'ahi.

- (6) Kuo pau 'e 'ikai fakahoko ha tangi 'i ha tu'utu'uni ki ha me'a 'i he kupu si'i (4) pe (5) 'o e kupu ni ki he fakamaau'anga pe ha ma'u mafai kehe kuo fakamahino pau 'i he kupu ni.

14 Ngaahi tu'unga ke fakafepaki

- (1) Kuo pau ke fakaha 'e he taha 'oku fakahoko ki ai fekau'aki mo 'ene faingamalie ke fokotu'u ia ko ha taha fakatonutonu, ha ngaahi makatu'unga 'e ala hoko ai ha ngaahi tala'a 'e ala fakamo'oni'i fekau'aki mo hono tu'unga 'ikai filifilimanako pe tau'ataina.
(2) Kuo pau ke fakaha 'o 'ikai toe toloi ki he ngaahi fa'ahi 'e ha taha fakatonutonu, mei he taimi ki he taimi 'o hono fokotu'u ia mo e lolotonga 'a e ngaahi hopo fakatonutonu, 'a e ngaahi makatu'unga ko ia tuku kehe kapau kuo ne 'osi fakaha 'e ia kia kinautolu.

- (3) 'E toki ngofua ke fakafepaki'i ha taha fakatonutonu kapau 'oku 'i ai ha ngaahi makatu'unga 'e hoko ai ha ngaahi tala'a 'e ala fakamo'oni'i ki hono tu'unga 'ikai filifilimanako pe tau'ataina, pe kapau 'oku 'ikai ke ne ma'u 'a e ngaahi faka'ilonga kuo felotoi ki ai 'a e ngaahi fa'ahi.
- (4) 'E ngofua ke fakafepaki'i 'e ha fa'ahi ha taha fakatonutonu 'a ia kuo ne fokotu'u, pe ko hono fokotu'u na'e kau ki ai 'a e fa'ahi ko ia, 'i he ngaahi 'uhinga pe ko ia 'a ia kuo ne 'ilo ki ai hili hono fakahoko 'o e fokotu'u.

15 Founga ngaue 'o e fakafepaki

- (1) 'Oku tau'ataina 'a e ngaahi fa'ahi ke felotoi ki ha founga ngaue ke fakafepaki'i 'aki ha taha fakatonutonu, 'o fakatatau ki he kupu si'i (3).
- (2) Ka 'ikai fakahoko 'a e felotoi ko ia 'i he kupu si'i (1), kuo pau ke 'oatu 'e ha fa'ahi 'oku ne taumu'a ke fakafepaki'i ha taha fakatonutonu, 'i loto 'i he 'aho 'e 15 hili 'ene 'ilo'i 'a kinautolu 'oku kau ki he fakamaau'anga fakatonutonu pe hili 'ene 'ilo ki ha makatu'unga 'oku 'uhinga ki ai 'i he kupu 14(3) mo e (4), ha fakamatala tohi 'o e ngaahi 'uhinga ki hono fakafepaki'i 'o e fakamaau'anga fakatonutonu.
- (3) Tuku kehe ka fakafoki 'e he taha fakatonutonu kuo fakafepaki'i hono lakanga pe kuo loto 'a e fa'ahi 'e taha ki he fakafepaki, kuo pau ke tu'utu'uni 'a e fakamaau'anga fakatonutonu ki he fakafepaki ko ia.
- (4) 'E ngofua ki he fa'ahi 'oku fakafepaki, kapau 'e 'ikai ikuna ha fakafepaki 'i ha founga ngaue kuo felotoi ki ai 'a e ngaahi fa'ahi pe 'i he founga ngaue 'o e kupu si'i (2) mo e (3), 'i loto 'i he 'aho 'e 30 hili hono ma'u 'o e fanongonogo 'oku 'ikai tali 'a e fakafepaki, ke kole ki he fakamaau'anga ke tu'utu'uni ki he fakafepaki, 'a ia ko 'ene tu'utu'uni kuo pau 'e 'ikai fakahoko ai ha tangi, lolotonga 'a e fakatatali 'a e kole ko ia, 'e ngofua ke hoko atu 'a e fakamaau'anga fakatonutonu, kau ki ai 'a e taha fakatonutonu 'oku fakafepaki'i, 'a e ngaahi hopo fakatonutonu pea fakahoko ha tu'utu'uni.

16 'Ikai fakahoko pe 'ikai malava ha fatongia

- (1) Kapau 'e 'ikai malava 'e ha taha fakatonutonu 'o fakahoko hono ngaahi fatongia pe koe'uhi ko ha ngaahi 'uhinga kehe 'o 'ikai fakahoko ha fatongia toloi ta'e'uhinga, 'oku ngata hono mafai kapau 'oku ne fakafoki hono lakanga pe kapau 'oku felotoi 'a e ngaahi fa'ahi ki he ngata ko ia.
- (2) Kapau 'oku 'ikai ke fakalelei'i 'a e me'a ko ia 'i he kupu si'i (1), 'e ngofua ke kole 'e ha fa'ahi ki he fakamaau'anga ke ne tu'utu'uni ki hono fakangata 'o e mafai, 'a ia ko e tu'utu'uni 'e 'ikai fakahoko ai ha tangi.
- (3) Kapau, 'i he kupu ni pe 'i he kupu 15(3), 'oku fakafoki 'e he taha fakatonutonu hono lakanga pe 'oku loto ha fa'ahi ki hono fakangata 'o e mafai 'o e taha

fakatonutonu, 'oku 'ikai 'uhinga eni 'oku tali 'a e fakalao 'o ha tu'unga 'oku 'uhinga ki ai 'i he kupu ni pe kupu 14.

17 Fokotu'u 'o ha taha fakatonutonu fetongi

Kapau 'e fakangata 'a e mafai 'o ha taha fakatonutonu 'i he kupu 15 pe 16 –

- (a) koe'uhi kuo ne fakafoki hono lakanga;
- (b) fakata'e'aonga'i hono mafai 'i ha felotoi 'a e ngaahi fa'ahi; pe
- (c) 'i ha me'a kehe 'o hono fakangata hono mafai;

kuo pau ke fokotu'u ha taha fakatonutonu fetongi 'o fakatatau ki he ngaahi tu'utu'uni na'e ala ngaue'aki ki hono fokotu'u 'o e taha fakatonutonu 'oku fetongi.

18 Malu'i 'o e taha fakatonutonu

- (1) 'Oku 'ikai ala mo'ua ha taha fakatonutonu ki ha me'a kuo fakahoko pe 'ikai fakahoko 'i hono fakahoko pe fakahoko kuo tukuaki'i 'o hono ngaahi fatongia ko e taha fakatonutonu tuku kehe kapau ko e fakahoko pe 'ikai fakahoko ko ia kuo fakaha na'e fakahoko 'i he loto kovi.
- (2) 'Oku ngaue'aki 'a e kupu si'i (1) ki ha taha ngaue pe fakafongia 'o ha taha fakatonutonu 'o hange ko eni ko hono ngaue'aki ki he taha fakatonutonu.
- (3) 'Oku 'ikai uesia 'e he kupu ni ha mo'ua 'o ha taha fakatonutonu koe'uhi ko 'ene fakafisi.

**KONGA 5 – MAFAI 'O E FAKAMAAU'ANGA
FAKATONUTONU**

19 Tu'unga malava 'o e fakamaau'anga fakatonutonu ke tu'utu'uni 'i hono mafai pe 'o'ona

- (1) 'E ngofua ke tu'utu'uni 'a e fakamaau'anga fakatonutonu 'i hono mafai pe 'o'ona, kau ki ai ha ngaahi launga fekau'aki mo e 'i ai ha aleapau fakatonutonu pe ko hono fakalao.
- (2) Koe'uhi ko e taumu'a 'o e kupu si'i (1), ko e kupu aleapau 'a ia 'oku ne hoko ko ha konga 'o ha aleapau kuo pau ke lau ia ko ha aleapau 'oku tau'ataina mei he ngaahi tu'unga kehe 'o e aleapau.
- (3) Ko ha tu'utu'uni 'a e fakamaau'anga fakatonutonu 'oku ta'e'aonga pea 'ikai fakalao 'a e aleapau, kuo pau 'e 'ikai fakata'e'aonga'i ai ha kupu fakatonutonu.

- (4) Kuo pau ke fakahoko 'a e tangi 'oku 'ikai ha mafai 'o e fakamaau'anga fakatonutonu 'o 'ikai toe tomui ange 'i hono fakahu atu 'o e fakamatala taukapo.
- (5) 'Oku 'ikai ta'ofi ha fa'ahi mei hono fakahoko ha tangi 'i he kupu si'i (4) koe'uhi na'a ne fokotu'u, pe na'e kau ki hono fokotu'u, 'o ha taha fakatonutonu.
- (6) Ko ha tangi koe'uhi kuo fakalaka 'a e fakamaau'anga fakatonutonu 'i he ngata'anga 'a hono mafai, kuo pau ke fakahoko ia 'i he vave taha mei hono fakahoko 'a e tukuaki'i lolotonga 'a e ngaahi hopo fakatonutonu.
- (7) 'E ngofua ke fakahu atu 'e he fakamaau'anga fakatonutonu ha tangi 'amui ange kapau 'oku ne pehe 'oku 'uhinga lelei 'a e toloi.
- (8) 'E ngofua ke tu'utu'uni 'a e fakamaau'anga fakatonutonu ki ha tangi ko e 'eke teuteu pe ko ha tu'utu'uni ki he ngaahi tu'unga.
- (9) Kapau 'e tu'utu'uni 'e he fakamaau'anga fakatonutonu 'i he 'eke teuteu 'oku 'i ai hono mafai, 'e ngofua ke kole 'e ha fa'ahi, 'i loto 'i he 'aho 'e 30 hili hono ma'u 'o e fanongonongo 'o e tu'utu'uni ko ia, ke tu'utu'uni 'a e fakamaau'anga ki he me'a, 'a ia kuo pau ko e tu'utu'uni 'e 'ikai fakahoko ai ha tangi.

20 Ngaahi mafai felave'i ki hono fakahoko 'o e ngaahi hopo fakatonutonu

Tuku kehe kapau 'e felotoi kehe ange 'a e ngaahi fa'ahi, kuo pau ke lau kuo felotoi 'a e ngaahi fa'ahi 'oku kau 'a e ngaahi mafai 'oku hilifaki 'i he fakamaau'anga fakatonutonu 'a e mafai ke –

- (a) tu'utu'uni 'a hono 'oatu 'o e toe fakaikiiki 'i ha tohi fakamatala 'eke pe tohi fakamatala taukapo;
- (b) tu'utu'uni 'a hono 'oatu 'o e malu'i ki he ngaahi totongi;
- (c) fokotu'u mo fakatonutonu 'a e taimi fakangatangata 'a ia kuo pau ke fakakakato ai 'a e ngaahi ngaue kehekehe 'i he hopo fakatonutonu;
- (d) tu'utu'uni 'a hono fekumi mo e 'oatu 'o e ngaahi tohi ngaue pe ngaahi naunau 'oku ma'u pe 'i he mafai 'o ha fa'ahi;
- (e) tu'utu'uni 'a hono tali 'o e ngaahi tohi fakafehu'i; mo
- (f) tu'utu'uni ki ha fa'ahi ke fakahoko 'a e kotoa 'o e ngaahi me'a kehe lolotonga 'a e hopo fakatonutonu 'o hange ko ia 'e fiema'u ke malava ke fakahoko totonu mo lelei 'a e tu'utu'uni.

KONGA 6 – NGAHI NGAUE FAKATAIMI MO E NGAHI TU'UTU'UNI TOKAMU'A

21 Mafai 'o e fakamaau'anga fakatonutonu ke tu'utu'uni 'a e ngaahi ngaue fakataimi

- (1) Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, 'e ngofua ki he fakamaau'anga fakatonutonu, 'i hano kole 'e ha fa'ahi, ke foaki 'a e ngaahi ngaue fakataimi.
- (2) Koe'uhi ko e ngaahi taumu'a 'o e Konga ni, "ngaahi ngaue fakataimi" 'oku 'uhinga ki ha ngaue 'oku fakataimi.
- (3) Ko e ngaue fakataimi ko ha ngaue fakataimi 'o tatau ai pe pe 'i he fotunga 'o ha tu'utu'uni pe 'i ha fotunga kehe, 'a ia, 'i ha taimi ki mu'a hono tuku atu 'o ha tu'utu'uni 'a ia kuo aofangatuku 'a e tu'utu'uni ki he maumau, 'oku tu'utu'uni 'e he fakamaau'anga fakatonutonu ki ha fa'ahi ke –
 - (a) tauhi pe fakafoki 'a e tu'unga angamaheni 'o fakatatali 'a e tu'utu'uni 'o e maumau;
 - (b) fakahoko 'a e ngaue te ne ta'ofi, pe faka'ehi'ehi mei hono fakahoko ha ngaue 'a ia te ne ala ke fakatupu, ha maumau (harm) lolotonga pe 'e ala hoko pe uestia 'a e ngaue fakatonutonu;
 - (c) 'oatu ha ngaahi founga ki hono fakatolonga 'o e ngaahi koloa 'a ia 'e ala fakakakato mei ai ha tu'utu'uni 'amui ai; pe
 - (d) fakatolonga 'a e fakamo'oni 'a ia 'e ala 'aonga mo mahu'inga ki hono fakalelei 'i 'o e ngaahi maumau.

22 Ngaahi tu'unga ki hono foaki 'o e ngaahi ngaue fakataimi

- (1) Kuo pau ki he fa'ahi 'oku ne kole ha ngaue fakataimi 'i he kupu 21(2)(a), (b) mo e (c), ke ne fakamahino ki he fakamaau'anga fakatonutonu –
 - (a) kapau 'e 'ikai tu'utu'uni ki he ngaue, 'e ala hoko ha maumau (harm) 'a ia 'e 'ikai ala fakalelei 'i fe'unga ia 'e ha tu'utu'uni ki ha ngaahi maumau, pea ko e maumau (harm) ko ia 'oku mahulu ange ia 'i he maumau (harm) 'e ala hoko ki he fa'ahi 'oku taumu'a ki ai 'a e ngaue kapau 'e foaki 'a e ngaue ko ia; pea
 - (b) 'oku 'i ai 'a e faingamalie fakapotopoto 'e ikuna 'a e fa'ahi 'oku kole 'i he ngaahi tu'unga 'o e 'eke.
- (2) Kuo pau ke 'ikai uestia 'e ha tu'utu'uni 'i he kupu si'i (1)(b) 'a e mafai 'o e fakamaau'anga fakatonutonu ke tu'utu'uni 'i hono fakahoko ha tu'utu'uni 'amui ange.
- (3) Kapau 'oku 'i ai ha kole ki ha ngaue fakataimi 'i he kupu 21(2)(d), kuo pau ke toki ngaue'aki pe 'a e ngaahi fiema'u 'i he kupu si'i (1)(a) mo e (b) ki he ngata'anga 'a ia 'oku pehe 'e he fakamaau'anga fakatonutonu 'oku taau.

23 Ngaahi tohi kole ki he ngaahi 'eke teuteu mo e ngaahi tu'unga ki hono foaki 'o e ngaahi tu'utu'uni tokamu'a

- (1) Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, 'e ngofua ke fakahoko 'e ha fa'ahi, ha kole ki ha ngaue fakataimi 'o 'ikai toe fanongonongo ki ha fa'ahi kehe, fakataha mo ha tohi kole ki ha tu'utu'uni tokamu'a 'o tu'utu'uni ki ha fa'ahi ke 'oua 'e fakafaingata'a ia 'a e taumu'a 'o e ngaue fakataimi kuo kole.
- (2) 'E ngofua ke foaki 'e he fakamaau'anga fakatonutonu ha tu'utu'uni tokamu'a, ka kuo pau ke ne fakakaukau'i 'a e faingata'a 'e ala hoko ki he taumu'a 'o e ngaue 'i hono fakaha kimu'a 'a e kole ki he ngaue fakataimi ki he fa'ahi 'a ia 'oku fakataumu'a ki ai.
- (3) 'E ngaue'aki 'a e ngaahi tu'unga kuo faka'uhinga'i 'i he kupu 22 ki ha tu'utu'uni tokamu'a, ka kuo pau ko e maumau (harm) ke sivi'i 'i he kupu 22(1)(a), ko e maumau (harm) ia 'e ala hoko mei hono foaki pe 'ikai foaki 'o e tu'utu'uni.

24 Founga pau ki he ngaahi tu'utu'uni tokamu'a

- (1) 'I he hili pe hono fakahoko 'e he fakamaau'anga fakatonutonu ha tu'utu'uni fekau'aki mo ha tohi kole ki ha tu'utu'uni tokamu'a, kuo pau ke 'oatu 'e he fakamaau'anga fakatonutonu ha fanongonongo ki he kotoa 'o e ngaahi fa'ahi –
 - (a) 'a e tohi kole ki he ngaue fakataimi;
 - (b) 'a e tohi kole ki he tu'utu'uni tokamu'a;
 - (c) 'a e tu'utu'uni tokamu'a, kapau 'oku 'i ai; mo e
 - (d) kotoa 'o e ngaahi fetu'utaki kehe, kau ki ai 'aki hono fakaha 'o e kakano 'o ha fetu'utaki talanoa, 'i he vaha'a 'o ha fa'ahi mo e fakamaau'anga fakatonutonu 'o fekau'aki mo ia.
- (2) Kuo pau ke 'oatu 'e he fakamaau'anga fakatonutonu 'i he taimi tatau, ha faingamalie ki ha fa'ahi 'a ia 'oku fakataumu'a ki ai ha tu'utu'uni tokamu'a ke fakahu atu 'ene tali 'i he taimi vave taha 'e ala lava.
- (3) Kuo pau ke tu'utu'uni taimi totonu 'a e fakamaau'anga fakatonutonu ki ha launga ki he tu'utu'uni tokamu'a.
- (4) Kuo pau ke ngata 'a e tu'utu'uni tokamu'a hili 'a e 'aho 'e 20 mei he 'aho 'a ia na'e foaki ai 'e he fakamaau'anga fakatonutonu.
- (5) 'E ngofua ke foaki 'e he fakamaau'anga fakatonutonu ha ngaue fakataimi 'o ngaue'aki pe liliu 'a e tu'utu'uni tokamu'a, hili hano 'oatu 'o e fanongonongo mo ha faingamalie ki he fa'ahi 'a ia 'oku fakataumu'a ki ai 'a e tu'utu'uni tokamu'a ke fakahu atu 'ene tali.
- (6) Kuo pau ke ha'i 'e he tu'utu'uni tokamu'a 'a e ngaahi fa'ahi ka kuo pau 'e 'ikai fiema'u ke fakahoko ia 'e ha fakamaau'anga.
- (7) 'Oku 'ikai hoko ha tu'utu'uni tokamu'a ko ha tu'utu'uni.

25 Liliu, ta'ofi fakataimi mo e fakangata

'E ngofua ke liliu, ta'ofi fakataimi pe fakangata 'e he fakamaau'anga fakatonutonu ha ngaue fakataimi pe ha tu'utu'uni tokamu'a kuo ne foaki, 'i hano kole 'e ha fa'ahi pe, 'i ha ngaahi tu'unga makehe pea 'i hano tomu'a fanongonongo ki he ngaahi fa'ahi, 'o fakatatau ki he fokotu'u 'a e fakamaau'anga fakatonutonu 'iate ia pe.

26 'Oatu 'o e malu'i

- (1) 'E ngofua ke tu'utu'uni 'e he fakamaau'anga fakatonutonu ke 'oatu 'e he fa'ahi 'oku ne kole ha ngaue fakataimi ha malu'i fe'unga 'o fekau'aki mo e ngaue.
- (2) Kuo pau ke tu'utu'uni 'e he fakamaau'anga fakatonutonu ke 'oatu 'e he fa'ahi 'oku kole ki ha tu'utu'uni tokamu'a 'a e malu'i fekau'aki ki he tu'utu'uni tuku kehe kapau 'oku pehe 'e he fakamaau'anga fakatonutonu 'oku 'ikai totonu pe fiema'u ke fakahoko ia.

27 Fakaha

- (1) 'E ngofua ke tu'utu'uni 'e he fakamaau'anga fakatonutonu ha fa'ahi ke fakaha taimi totonu ha liliu mahu'inga 'i he ngaahi makatu'unga 'a ia na'e tu'unga ai 'a e 'uhinga 'o e kole pe foaki 'a e ngaue.
- (2) Kuo pau ke fakaha 'e he fa'ahi 'oku kole ki ha tu'utu'uni tokamu'a ki he fakamaau'anga fakatonutonu 'a e kotoa 'o e ngaahi makatu'unga 'a ia 'e ala fekau'aki mo e tu'utu'uni 'a e fakamaau'anga fakatonutonu ki hono foaki pe tauhi 'a e tu'utu'uni, pea kuo pau ke hokohoko atu 'a e fatongia ko ia kae 'oua kuo 'i ai ha faingamalie 'o e fa'ahi 'a ia na'e kole ki ai 'a e tu'utu'uni ke fakahu atu 'ene tali.
- (3) Kuo pau ke ngaue'aki 'a e kupu si'i (1) 'i he hili 'a hono fakakakato 'e ha fa'ahi 'a e ngaahi fiema'u 'i he kupu si'i (2).

28 Ngaahi fakamole mo e maumau

- (1) Kuo pau ke ala mo'ua 'a e fa'ahi 'oku ne kole ha ngaue fakataimi pe kole ha tu'utu'uni tokamu'a ki ha ngaahi fakamole mo e maumau kuo fakatupu 'e he ngaue pe tu'utu'uni ki ha fa'ahi kapau 'e tu'utu'uni 'e he fakamaau'anga fakatonutonu 'amui, 'i he ngaahi makatu'unga ko ia, na'e 'ikai totonu ke foaki 'a e ngaue pe tu'utu'uni.
- (2) 'E ngofua ke foaki 'e he fakamaau'anga fakatonutonu 'a e ngaahi fakamole mo e maumau ko ia 'i ha taimi pe lolotonga 'a e ngaahi hopo.

29 Tali mo e fakahoko 'o ha ngaue fakataimi

- (1) Kuo pau ko e ngaue fakataimi kuo tuku atu 'e ha fakamaau'anga fakatonutonu, 'o tatau pe ko fe 'a e fonua 'a ia na'e fakahoko ai, ke tali ia 'oku ne ha'i pea, tuku kehe ka tu'utu'uni kehe 'e he fakamaau'anga fakatonutonu, ke fakahoko 'i ha tohi kole ki he fakamaau'anga, 'o fakatatau ki he kupu 30.
- (2) Kuo pau ke fakaha 'i he taimi totonu ki he fakamaau'anga 'e he fa'ahi 'oku ne kole pe kuo foaki ki ai 'a e tali pe fakahoko ha ngaue fakataimi hano fakatangata, ta'ofi fakataimi pe liliu 'o e ngaue fakataimi ko ia.
- (3) 'E ngofua ki he fakamaau'anga 'i ha 'i ai ha kole ke tali pe fakahoko, kapau 'oku ne pehe 'oku totonu, ke tu'utu'uni ki he fa'ahi 'oku kole ke 'oatu 'a e malu'i fe'unga kapau 'oku te'eki ai ke fakahoko 'e he fakamaau'anga fakatonutonu ha tu'utu'uni 'o fekau'aki mo e malu'i pe kapau 'oku fiema'u ha tu'utu'uni pehe ke malu'i 'a e ngaahi totonu 'a e ngaahi fa'ahi kehe.

30 Ngaahi tu'unga ke 'ikai tali pe fakahoko 'o ha ngaue fakataimi

- (1) 'E ngofua pe ke 'ikai tali pe fakahoko ha ngaue fakataimi –
 - (a) 'i hano kole 'e he fa'ahi 'a ia 'oku fakahoko ki ai kapau 'oku fiemalie 'a e fakamaau'anga –
 - (i) ko e 'ikai tali ko ia 'oku fakamo'oni'i 'i he ngaahi tu'unga kuo 'oatu 'i he kupu 60(1)(a)(i) – (iv); pe
 - (ii) kuo 'ikai faipau ki he tu'utu'uni 'a e fakamaau'anga fakatonutonu felave'i mo hono 'oatu 'o e malu'i fekau'aki mo e ngaue fakataimi kuo foaki 'e he fakamaau'anga fakatonutonu; pe
 - (iii) kuo fakangata pe ta'ofi fakataimi 'e he fakamaau'anga fakatonutonu 'a e ngaue fakataimi pe, 'i hono fakamafai, 'e he fakamaau'anga 'o e fonua 'a ia na'e fakahoko ai 'a e fakatonutonu pe 'i he lao 'a ia na'e tali ai 'a e ngaue fakataimi; pe
 - (b) kapau 'e 'ilo 'e he fakamaau'anga —
 - (i) 'oku 'ikai faitatau 'a e ngaue fakataimi ki he ngaahi mafai kuo foaki ki he fakamaau'anga tuku kehe ka tu'utu'uni 'a e fakamaau'anga ke toe fokotu'utu'u 'a e ngaue fakataimi ki he tu'unga 'e fiema'u ke liliu ia ki hono ngaahi mafai pe 'o'ona mo e ngaahi ngaue koe'uhi ko e ngaahi taumu'a hono fakahoko 'o e ngaue fakataimi ko ia pea 'ikai liliu hono fa'unga; pe
 - (ii) 'oku ngaue'aki ki hono tali mo e fakahoko 'o e ngaue fakataimi ha taha 'o e ngaahi tu'unga kuo 'oatu 'i he kupu 60 (1)(b)(i) pe (ii).
- (2) Kuo pau ke toki ngaue'aki pe ha tu'utu'uni kuo fakahoko 'e he fakamaau'anga 'i ha tu'unga 'i he kupu si'i (1) koe'uhi ko e ngaahi taumu'a 'o e tohi kole ke tali mo fakahoko 'a e ngaue fakataimi.

- (3) Kuo pau ke 'ikai fakahoko 'e he fakamaau'anga ha toe vakai'i 'o e fa'unga 'o e ngaue fakataimi 'i hono fakahoko ha tu'utu'uni 'i he kupu si'i (2).

31 Ngaahi ngaue fakataimi kuo tu'utu'uni 'e he fakamaau'anga

Kuo pau ke ngaue'aki 'e he fakamaau'anga 'a hono ngaahi tu'utu'uni ngaue pe 'a'ana 'i he taimi 'oku foaki ai ha ngaue fakataimi, 'o felave'i mo e ngaahi hopo fakatonutonu 'o tatau ai pe ko Tonga 'a e feitu'u 'o e fakatonutonu.

**KONGA 7 – FAKAHOKO 'O E NGAahi HOPO
FAKATONUTONU**

**32 Fakatahataha'i 'o e ngaahi hopo mo e ngaahi fakamaau'i hokohoko
taimi taha**

- (1) 'Oku tau'ataina 'a e ngaahi fa'ahi ke felotoi –
- (a) kuo pau ke fakatahataha'i 'a e ngaahi hopo fakatonutonu mo e ngaahi hopo fakatonutonu kehe; pe
- (b) kuo pau ke fakahoko 'a e ngaahi fakamaau'i hokohoko taimi taha 'i he ngaahi tu'unga 'e ala felotoi ai.
- (2) Tuku kehe kapau 'oku felotoi 'a e ngaahi fa'ahi ke foaki 'a e mafai ko ia ki he fakamaau'anga, 'oku 'ikai ke 'i ai ha mafai 'a e fakamaau'anga ke tu'utu'uni ki hono fakatahataha'i 'o e ngaahi hopo pe ngaahi fakamaau'i hokohoko taimi taha.

33 Vahevahe tatau 'o e ngaahi fa'ahi

Kuo pau ke vahevahe tatau 'a e ngaahi fa'ahi pea kuo pau ke 'oange ha faingamalie ke fakahu atu 'ene tali.

34 Fakafongga 'i he ngaahi hopo fakatonutonu

Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, 'e ngofua ke ha tonu pe ha fa'ahi 'i ha fakamaau'anga fakatonutonu pea 'e ngofua ke fakafongga'i ia –

- (a) 'e ia pe; pe
- (b) 'e ha taha kehe pe kuo fili 'e he fa'ahi ko ia.

35 Tu'utu'uni ki he ngaahi tu'utu'uni 'o e founa ngaue

- (1) Fakatatau ki he Lao ni, 'oku tau'ataina 'a e ngaahi fa'ahi ke felotoi ki he founa ngaue ke muimui ki ai 'a e fakamaau'anga fakatonutonu 'i hono fakahoko 'o e ngaahi hopo.
- (2) 'E ngofua ki he fakamaau'anga fakatonutonu 'i ha 'ikai fakahoko 'a e felotoi ko ia, fakatatau ki he Lao ni, ke fakahoko 'a e fakatonutonu 'i he founa ko ia 'oku ne pehe 'oku taau.
- (3) Ko e mafai kuo foaki ki he fakamaau'anga fakatonutonu 'oku kau ki ai 'a e mafai ke tu'utu'uni ki hono tali, felave'i, mahu'inga mo e malohi 'o ha fakamo'oni.

36 Feitu'u 'o e fakatonutonu

- (1) 'Oku tau'ataina 'a e ngaahi fa'ahi ke felotoi ki he feitu'u 'o e fakatonutonu.
- (2) Kuo pau ke tu'utu'uni 'a e fakamaau'anga fakatonutonu 'i ha 'ikai fakahoko 'a e felotoi ko ia, 'a e feitu'u 'o e fakatonutonu 'i he vakai ki he ngaahi tu'unga 'o e hopo, kau ki ai 'a 'ene faingamalie ki he ngaahi fa'ahi.
- (3) Neongo 'a e ngaahi tu'utu'uni 'o e kupu si'i (1), 'e ngofua ki he fakamaau'anga fakatonutonu, tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, ke fakataha 'i ha feitu'u 'oku ne pehe 'oku taau ki he fepotalanoa'aki mo hono kau memipa, fanongo ki he kau fakamo'oni, kau taukei pe ngaahi fa'ahi, pe ki hono vakai 'i 'o e ngaahi koloa (goods), koloa (property) kehe pe ngaahi tohi ngaue.

37 Kamata 'o e ngaahi hopo fakatonutonu

- (1) Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, 'oku kamata 'a e ngaahi hopo fakatonutonu fekau'aki mo ha tefito'i maumau 'i he 'aho 'oku ma'u ai 'e he faka'iloa ha kole ke 'ave 'a e maumau ko ia ki he fakatonutonu ka kimu'a 'i he ngata 'a e ta'u 'e nima mei he 'aho na'e tupu mei ai 'a e maumau.
- (2) 'I hono fika'i 'a e vaha'ataimi ko ia, ko e vaha'ataimi 'o ha ngaahi hopo fakatonutonu kimu'a 'a ia na'e tupu mei he alepau fakatonutonu tatau mo fekau'aki mo e maumau pe ngaahi maumau tatau 'i he alepau ko ia, 'a ia 'oku felave'i mo ha tu'utu'uni kuo fakata'e'aonga'i 'i he Lao ni, kuo pau ke 'ikai lau ia.

38 Lea

Kuo pau ke tau'ataina 'a e ongo fa'ahi ke felotoi ki ha lea pe ngaahi lea ke ngaue'aki 'i he ngaahi hopo fakatonutonu.

39 Ngaahi tohi fakamatala 'o e 'eke mo e taukapo

- (1) Kuo pau ke fakahu atu 'e he taha 'eke 'a 'ene tohi fakamatala 'o e 'eke 'i loto 'i he vaha'ataimi kuo fakahoko ki ai 'a e felotoi pe kuo tu'utu'uni 'e he fakamaau'anga fakatonutonu.
- (2) Kuo pau ke fakaha 'i he tohi fakamatala 'o e 'eke –
 - (a) 'a e ngaahi mo'oni'i me'a 'oku pou pou ki he'ene 'eke;
 - (b) 'a e ngaahi me'a ke vakai'i; mo e
 - (c) huhu'i 'oku 'eke.
- (3) Kuo pau ke fakaha 'e he faka'iloa 'ene taukapo 'o feka'aki mo e fakaikiiki 'i loto 'i he vaha'ataimi kuo fakahoko ki ai 'a e felotoi pe kuo tu'utu'uni 'e he fakamaau'anga fakatonutonu, tuku kehe kapau kuo felotoi kehe 'a e ngaahi fa'ahi ia ki he ngaahi 'elemeniti 'o e ngaahi tohi fakamatala ko ia 'oku fiema'u.
- (4) 'E ngofua ke fakahu atu 'e he ngaahi fa'ahi ha ngaahi tohi ngaue tanaki atu 'a ia 'oku nau pehe 'oku felave'i.
- (5) Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, 'e ngofua ke fakatonutonu pe fakalahi 'e ha taha pe 'o e ngaahi fa'ahi 'a 'ene 'eke pe taukapo lolotonga hono fakahoko 'o e ngaahi hopo fakatonutonu, tuku kehe ka pehe 'e he fakamaau'anga fakatonutonu 'oku 'ikai taau ke faka'ataa 'a e fakatonutonu ko ia 'i he vakai ki he toloi 'i hono fakahoko ia.

40 Ngaahi hopo 'oku fakamaau'i mo tohi

- (1) Fakatatau ki ha felotoi kehe 'a e ngaahi fa'ahi, kuo pau ke tu'utu'uni 'a e fakamaau'anga fakatonutonu ke fakahoko 'a e ngaahi hopo 'i he lea ki hono fakaha 'o e fakamo'oni pe ki he fakakikihi 'i he lea, pe kuo pau ke fakahoko 'a e ngaahi hopo 'o makatu'unga 'i he ngaahi tohi ngaue mo e ngaahi naunau kehe.
- (2) Tuku kehe kapau kuo felotoi 'a e ngaahi fa'ahi 'e 'ikai fakahoko 'a hono fakamaau'i, kuo pau ke fakahoko 'e he fakamaau'anga fakatonutonu 'a e ngaahi fakamaau'i ko ia 'i ha tu'unga 'o e ngaahi hopo 'oku taau, kapau kuo kole ia 'e ha fa'ahi.
- (3) Kuo pau ke 'oatu ki he ngaahi fa'ahi ha fanongonongo taimi fe'unga kimu'a 'o ha fakamaau'i pea 'o ha fakataha 'a e fakamaau'anga fakatonutonu koe'uhi ko e ngaahi taumu'a 'o hono vakai'i 'a e ngaahi koloa (goods), koloa (property) pe ngaahi tohi ngaue kehe.
- (4) Kuo pau ke fakahoko ki he fa'ahi 'e taha 'a e kotoa 'o e ngaahi tohi fakamatala, tohi ngaue pe fakamatala kehe kuo 'oatu 'e ha fa'ahi 'e taha ki he fakamaau'anga fakatonutonu.
- (5) Fakatatau ki he kupu 42, kuo pau ke fakahoko ki he ngaahi fa'ahi ha lipooti mataotao pe tohi ngaue fakamo'oni 'a ia 'e ala ngaue'aki 'e he fakamaau'anga fakatonutonu 'i hono fakahoko 'ene tu'utu'uni.

41 'Ikai faipau ha fa'ahi

Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, kapau, 'o 'ikai fakaha ha 'uhinga fe'unga –

- (a) 'oku 'ikai fakahoko 'e he taha 'eke 'ene fakamatala 'o e 'eke 'o fakatatau ki he kupu 39(1) – (4), kuo pau ke fakangata 'e he fakamaau'anga fakatonutonu 'a e ngaahi hopo;
- (b) 'oku 'ikai fakahoko 'e he faka'iloa 'ene fakamatala taukapo 'o fakatatau ki he kupu 39(1) – (4), kuo pau ki he fakamaau'anga fakatonutonu ke hoko atu 'a e ngaahi hopo 'o 'ikai lau 'a e 'ikai faipau ko ia ko ha tali ia 'o e ngaahi tukuaki 'i 'a e taha 'eke; pe
- (c) 'oku 'ikai ke ha 'a e fa'ahi 'i ha fakamaau' i pe ke 'oatu ha fakamo'oni tohi, 'e ngofua ki he fakamaau'anga fakatonutonu ke hoko atu 'a e ngaahi hopo pea fakahoko 'a e tu'utu'uni 'i he fakamo'oni 'oku 'i ai.

42 Taha mataotao kuo fokotu'u 'e he fakamaau'anga fakatonutonu

- (1) Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, 'e ngofua ki he fakamaau'anga fakatonutonu ke –
 - (a) fokotu'u ha mataotao 'e taha pe lahi ange ke lipooti ki ai fekau'aki mo e ngaahi me'a pau 'e tu'utu'uni 'e he fakamaau'anga fakatonutonu;
 - (b) tu'utu'uni ke 'oatu 'e ha fa'ahi ki he taha mataotao ha fakamatala fekau'aki pe ke ne 'oatu, pe faka'ataa, ha ngaahi tohi ngaue, ngaahi koloa (goods) pe koloa (property) kehe fekau'aki mo ia ke ne vakai.
- (2) Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, kuo pau ki he taha mataotao, kapau 'e kole ia 'e ha fa'ahi pe kapau 'e pehe 'e he fakamaau'anga fakatonutonu 'oku fiema'u, hili hono fakaha 'ene lipooti tohi pe lea, ke ne kau ki ha fakamaau' i 'a ia 'e 'i ai 'a e faingamalie 'a e ngaahi fa'ahi ke 'oatu kiate ia 'a e ngaahi fehu'i pea ke 'oatu 'a e kau fakamo'oni mataotao koe'uhi ke fakamo'oni 'i he ngaahi me'a 'oku vakai'i.

43 Tokoni mei he fakamaau'anga ki hono ma'u 'o e fakamo'oni

- (1) 'E ngofua ke kole 'e he fakamaau'anga fakatonutonu pe ha fa'ahi 'i he fakangofua 'a e fakamaau'anga fakatonutonu ha tokoni mei he fakamaau'anga ki hono ma'u 'o e fakamo'oni.
- (2) 'E ngofua ke fakahoko 'e he fakamaau'anga 'a e kole 'o fakatatau ki he'ene ngaahi tu'utu'uni ki hono ma'u 'o e fakamo'oni.
- (3) Koe'uhi ko e ngaahi taumu'a 'o e ongo kupu si'i (1) mo e (2), 'e ngofua ki he fakamaau'anga ke –

- (a) fakahoko ha tu'utu'uni 'o e tohi fekau ke fekau ke ha 'a e taha fakamo'oni 'i he fakamaau'anga fakatonutonu ke 'oatu ha fakamo'oni pe 'oatu ha ngaahi tohi ngaue; pe
- (b) tu'utu'uni ki ha taha fakamo'oni ke kau ki he faka'eke'eke 'i he fuakava pe fakapapau ki he fakamaau'anga fakatonutonu, pe ki he 'ofisa 'o e fakamaau'anga, pe ha taha kehe ki hono ngaue'aki 'e he fakamaau'anga fakatonutonu.

44 Tu'utu'uni ki he fehu'i fakalao tokamu'a

- (1) Tuku kehe ka felotoi kehe ange ki ai 'a e ngaahi fa'ahi, 'e ngofua ki he fakamaau'anga 'i he tohi kole 'o ha fa'ahi ki ha ngaahi hopo fakatonutonu, 'i hono fanongonongo ki he ngaahi fa'ahi kehe, ke tu'utu'uni ki ha fehu'i fakalao 'oku hoko 'i he lolotonga 'o e ngaahi hopo 'a ia 'oku fiemalie 'a e fakamaau'anga 'oku ne uesia lahi 'a e ngaahi totonu 'o ha fa'ahi 'e taha pe lahi ange.
- (2) Kuo pau ke 'ikai lau ha tohi kole 'i he kupu ni tuku kehe kapau –
 - (a) 'oku fakahoko 'i he felotoi ki ai 'a e kotoa 'o e ngaahi fa'ahi kehe ki he ngaahi hopo; pe
 - (b) 'oku fakahoko 'i he fakangofua 'e he fakamaau'anga fakatonutonu pea 'oku fiemalie 'a e fakamaau'anga –
 - (i) ko e tu'utu'uni ki he fehu'i 'e ngalingali ke hoko ia ko e fakasi'isi' i lahi ki he ngaahi totongi; pea
 - (ii) ko e tohi kole na'e fakahoko 'o 'ikai toe toloi.
- (3) Kuo pau ke faka'ilonga'i 'i he tohi kole 'a e fehu'i fakalao ke tu'utu'uni pea, tuku kehe kapau 'e fakahoko 'i he felotoi 'a e kotoa 'o e ngaahi fa'ahi kehe ki he ngaahi hopo, kuo pau ke fakaha 'a e ngaahi tu'unga 'a ia 'oku pehe ai 'oku totonu ke tu'utu'uni 'a e fakamaau'anga ki he fehu'i.
- (4) Tuku kehe ka felotoi kehe ange ki ai 'a e ngaahi fa'ahi, 'e ngofua ki he fakamaau'anga fakatonutonu ke hoko atu 'a e ngaahi hopo fakatonutonu mo fakahoko ha tu'utu'uni lolotonga ia 'a e fakatatali 'a e tohi kole ki he fakamaau'anga 'i he kupu ni.
- (5) Tuku kehe ka foaki 'e he fakamaau'anga ha ngofua, 'e 'ikai fakahoko ha tangi 'i he tu'utu'uni 'a e fakamaau'anga pe kuo kakato 'a e ngaahi tu'unga 'a ia kuo fakamahino pau 'i he kupu si'i (2).
- (6) Kuo pau ke lau 'a e tu'utu'uni 'o e fakamaau'anga ki ha fehu'i fakalao ko ha tu'utu'uni 'o e fakamaau'anga ki he ngaahi taumu'a 'o ha tangi ka 'e 'ikai fakahoko ha tangi 'oku 'ikai ma'u ha ngofua 'a e fakamaau'anga 'a ia kuo pau ke 'ikai foaki ia tuku kehe ka pehe 'e he fakamaau'anga 'oku mahu'inga 'a e fehu'i, pe 'oku 'i ai 'a e 'uhinga mahu'inga makehe kuo pau ke tu'utu'uni ki ai 'a e Fakamaau'anga Tangi.

45 Fakapulipuli

- (1) Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, kuo pau ke fakapulipuli 'a e kotoa 'o e ngaahi tohi ngaue mo e ngaahi me'a felave'i mo e fakatonutonu pea 'e 'ikai ngofua ke pulusi, fakaha pe fakahoko 'e ha fa'ahi ha fakamatala felave'i –
- (a) mo e ngaahi hopo fakatonutonu; pe
- (b) ha ngaahi tu'utu'uni 'i he fakatonutonu.
- (2) 'E 'ikai ha me'a 'i he kupu si'i (1) ke ne ta'ofi hono pulusi, fakaha pe fetu'utaki 'o e fakamatala 'oku 'uhinga ki ai 'a e kupu si'i ko ia 'e ha fa'ahi kapau 'oku fakahoko 'a e pulusi, fakaha pe fetu'utaki –
- (a) ke malu'i pe kumi ha totonu fakalao pe kaunga 'a e fa'ahi;
- (b) ke fakahoko pe pole'i 'a e tu'utu'uni 'oku 'uhinga ki ai 'i he kupu si'i ko ia, 'i he ngaahi hopo fakalao 'i ha fakamaau'anga pe ha mafai fakamaau'anga kehe 'i Tonga pe 'i tu'apule'anga;
- (c) ki ha sino fakapule'anga, sino pule, fakamaau'anga pe fakatonutonu'anga pea 'oku fakafatongia 'e he lao 'a e fa'ahi ke fakahoko 'a e pulusi, fakaha pe fetu'utaki;
- (d) fakataau ki ha tu'utu'uni kuo fakahoko 'e he fakamaau'anga fakatonutonu, 'o fakangofua ha fa'ahi ke fakahoko ia pea 'e ngofua ke toki fakahoko pe 'a e tu'utu'uni ko ia 'i hano kole 'e ha fa'ahi, pea hili hono 'oange ki he ngaahi fa'ahi ha faingamalie ke tali ki ai; pe
- (e) ki ha palofesinale pe ki ha taha fale'i kehe 'o ha taha 'o e ngaahi fa'ahi.

KONGA 8 – FAKAHOKO 'O E TU'UTU'UNI FOAKI MO HONO FAKANGATA 'O E NGAahi HOPO**46 Ngaahi tu'utu'uni ala ngaue'aki ki he tu'unga 'o e maumau**

- (1) Kuo pau ke tu'utu'uni 'a e fakamaau'anga fakatonutonu ki he maumau 'o fakataau ki he ngaahi tu'utu'uni 'a e lao kuo fili 'e he ngaahi fa'ahi 'a ia 'oku ala ngaue'aki ki he tu'unga 'o e maumau.
- (2) Ko e lao pe fa'unga fakalao 'o ha fonua kuo fili, kuo pau ke faka'uhinga ia, tuku kehe-ka fakamahino kehe, ke 'uhinga fakahangatonu ki he lao tefito 'o e fonua ko ia pea 'ikai ko e ngaahi tu'utu'uni 'o e ngaahi lao 'oku tu'u fehangahangai mo ia.
- (3) Ka 'ikai fakahoko 'e he ngaahi fa'ahi ha fili, kuo pau ke ngaue'aki 'e he fakamaau'anga fakatonutonu, 'a e lao 'oku tu'utu'uni 'e he ngaahi tu'utu'uni 'o e lao 'oku tu'u fehangahangai mo ia 'a ia 'oku ne pehe 'e ala ngaue'aki.
- (4) Kuo pau ke tu'utu'uni 'e he fakamaau'anga fakatonutonu 'i he me'a 'oku taau mo totonu kapau pe kuo fakangofua mahino 'e he ngaahi fa'ahi ke fakahoko ia.

- (5) 'I he kotoa 'o e ngaahi me'a, kuo pau ke tu'utu'uni 'e he fakamaau'anga fakatonutonu 'o fakatatau ki he ngaahi tu'unga 'o e alcapau pea kuo pau ke vakai'i mo e ngaahi ngaue angamaheni 'o e fefakatau'aki 'oku ala ngaue'aki ki he ngaue ko ia.
- (6) 'E ngofua ke tu'utu'uni foaki 'e he fakamaau'anga fakatonutonu ha tu'utu'uni fakalelei pe huhu'i 'a ia 'e malava 'e he fakamaau'anga ke tu'utu'uni kapau na'e hoko 'a e maumau 'i ha fakatonutonu sivile 'i he fakamaau'anga ko ia.

47 Fakahoko tu'utu'uni 'a e penolo 'o e kau fakatonutonu

- (1) Kapau 'oku lahi ange 'i he taha 'a e kau fakatonutonu, kuo pau ke fakahoko 'a e tu'utu'uni 'a e fakamaau'anga fakatonutonu, tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, 'e he toko lahi taha 'o e kotoa hono kau memipa.
- (2) 'E ngofua ke tu'utu'uni 'a e taha fakatonutonu pule ki he ngaahi fehu'i 'o e tu'utu'uni ki he founa ngaue, kapau kuo fakangofua ia 'e he ngaahi fa'ahi pe kotoa 'o e kau memipa 'o e fakamaau'anga fakatonutonu.

48 Fakalelei

- (1) Kapau 'oku fakalelei 'e he ngaahi fa'ahi 'a e maumau lolotonga 'a e ngaahi hopo fakatonutonu, kuo pau ke fakangata 'e he fakamaau'anga fakatonutonu 'a e ngaahi hopo, kapau 'e kole 'e he ngaahi fa'ahi pea 'ikai faka'ikai' 'e he fakamaau'anga fakatonutonu, pea lekooti 'a e felotoi ko ia 'i ha fotunga 'o ha tu'utu'uni fakatonutonu 'i he ngaahi tu'unga kuo felotoi ki ai.
- (2) Kuo pau ke fakahoko ha tu'utu'uni foaki ki he ngaahi tu'unga kuo felotoi ki ai 'o fakatatau ki he ngaahi tu'utu'uni 'o e kupu 51 pea kuo pau ke fakaha ai ko e tu'utu'uni foaki ia.
- (3) Ko e tu'utu'uni foaki 'oku fakahoko 'i he kupu ni 'oku ne ma'u 'a e tu'unga mo e ngaue tatau 'o hange ko ha toe tu'utu'uni foaki kehe 'i he ngaahi makatu'unga 'o e hopo.

49 Totongi tupu 'i he'ene a'u ki he fakahoko tu'utu'uni foaki

- (1) Kapau 'e tu'utu'uni 'e ha fakamaau'anga fakatonutonu ke fakahoko ha tu'utu'uni ki hono totongi 'o ha pa'anga, pe 'i ha 'eke ki ha pa'anga kuo veteki fakalao pe 'ikai veteki fakalao, 'e ngofua ki he fakamaau'anga, 'o fakatatau ki he kupu si'i (2), ke fakakau 'i he lahi 'o e pa'anga 'a ia 'oku fakahoko ai 'a e tu'utu'uni, 'a e tupu 'i ha tu'unga fakapotopoto 'oku tu'utu'uni 'e he fakamaau'anga ki he kotoa pe kongā 'o e pa'anga, ki he kotoa pe ha kongā 'o e vaha'ataimi mei he 'aho na'e kamata ai 'a e 'eke ki he 'aho na'e fakahoko ai 'a e tu'utu'uni foaki.
- (2) Ko e kupu si'i (1) 'oku 'ikai ke ne —

- (a) fakamafai 'a hono tu'utu'uni foaki 'o ha tupu 'o hilifaki 'i ha tupu;
- (b) ngaue'aki 'o felave'i mo ha pa'anga 'oku ala totongi ki ai ha tupu 'a ia ko ha totonu 'o tatau ai pe pe koe'uhi ko ha aleapau pe kehe ange; pe
- (c) uesia 'a e ngaahi maumau 'a ia 'e ala ma'u koe'uhi ko e 'ikai fakakakato 'o ha lau'itohi fetongi pa'anga.

50 Totongi tupu 'o e mo'ua 'i ha tu'utu'uni foaki

- (1) 'Oku ngaue'aki 'a e kupu ni kapau –
 - (a) 'oku fakahoko 'e ha fakamaau'anga fakatonutonu ha tu'utu'uni foaki ki hono totongi 'a e lahi 'o ha pa'anga; pea
 - (b) 'i he tu'utu'uni foaki, ko e pa'anga ko ia ke totongi 'i ha 'aho ke ngata ki ai.
- (2) 'E ngofua ki he fakamaau'anga fakatonutonu ke fekau ko e tupu ko ia, kau ai ha tupu kuo hilifaki 'i ha tupu, 'oku ala totongi kapau 'oku 'ikai totongi 'a e pa'anga ko ia 'i he pe kimu'a 'a e 'aho ke ngata ki ai.
- (3) 'E ngofua ke fokotu'u 'e he fakamaau'anga fakatonutonu ha tu'unga 'o e tupu 'oku fakapotopoto.
- (4) 'Oku ala totongi 'a e tupu –
 - (a) mei he 'aho pe ko ia hili 'a e 'aho 'oku ngata ki ai; pea
 - (b) ki he lahi 'o e pa'anga 'oku te'eki ke totongi.
- (5) 'Oku lau 'a e fekau ko ia ko e konga 'o e tu'utu'uni foaki.

51 Fotunga mo e kakano 'o e tu'utu'uni foaki

- (1) Kuo pau ke fakahoko 'a e tu'utu'uni foaki 'i he tohi, fakamo'oni hingoa ki ai 'a e taha fakatonutonu pe kau fakatonutonu pea tufa ki he fa'ahi taki taha.
- (2) Kapau 'oku tokolahi hake 'a e kau fakatonutonu 'i he taha, kuo pau ke fe'unga 'a e ngaahi fakamo'oni hingoa 'a e tokolahi ange 'o e kotoa 'o e kau memipa 'o e fakamaau'anga fakatonutonu, ka kuo pau ke fakaha 'a e 'uhinga 'oku 'ikai kau ai ha fakamo'oni hingoa.
- (3) Kuo pau ke fakaha 'e he tu'utu'uni –
 - (a) 'a e ngaahi 'uhinga 'a ia 'oku makatu'unga ai, tuku kehe kapau kuo felotoi 'a e ngaahi fa'ahi ke 'oua 'e 'oatu ha 'uhinga pe ko e tu'utu'uni ko ha tu'utu'uni 'i he ngaahi tu'unga kuo felotoi ki ai 'i he kupu 48; mo e
 - (b) 'aho mo e feitu'u 'o e fakatonutonu.
- (4) Kuo pau ke ngaue'aki 'a e kupu ni ki ha fakalelei pe ha faka'uhinga 'o ha tu'utu'uni 'i he kupu 53 pe ki ha tu'utu'uni foaki tanaki atu 'i he kupu 54.

52 Fakangata 'o e ngaahi hopo

- (1) 'Oku fakangata 'a e ngaahi hopo fakatonutonu 'e he tu'utu'uni foaki aofangatuku pe 'e ha tu'utu'uni 'o e fakamaau'anga fakatonutonu 'o fakatautu ki he kupu si'i (2).
- (2) Kuo pau ke tuku atu 'e he fakamaau'anga fakatonutonu ha tu'utu'uni ki hono fakangata 'o e ngaahi hopo fakatonutonu kapau –
 - (a) 'oku fakafoki 'e he taha 'eke 'ene 'eke, tuku kehe ka launga ai 'a e faka'iloa pea 'oku tali 'e he fakamaau'anga fakatonutonu 'oku 'i ai 'a e kaunga totonu ki ai 'a hono ma'u ha fakalelei aofangatuku 'o e maumau;
 - (b) kuo felotoi 'a e ngaahi fa'ahi ki hono fakangata 'o e ngaahi hopo; pe
 - (c) kuo pehe 'e he fakamaau'anga fakatonutonu 'oku 'ikai fiema'u pe lava ke hoko atu 'a e ngaahi hopo koe'uhi ko ha 'uhinga kehe.
- (3) 'Oku ngata 'a e mafai 'o e fakamaau'anga fakatonutonu 'i hono fakangata 'o e ngaahi hopo fakatonutonu, 'o fakatautu ki he ngaahi kupu 53, 54 mo e 58(4).

53 Fakatonutonu mo e faka'uhinga'i 'o e tu'utu'uni foaki

- (1) 'E ngofua ki ha fa'ahi ke kole ki he fakamaau'anga fakatonutonu 'i loto 'i he 'aho 'e 30 mei hono ma'u 'o ha tu'utu'uni foaki, tuku kehe kapau kuo felotoi kehe ange 'a e ngaahi fa'ahi, ke —
 - (a) fakalelei ha ngaahi fehalaaki 'i he tu'utu'uni foaki 'o ha fika, ngaahi fehalaaki fakakalake pe taipe pe ha ngaahi fehalaaki 'oku natula tatau; pe
 - (b) 'oatu ha faka'uhinga ki ha me'a pe konga pau 'o e tu'utu'uni foaki.
- (2) Kuo pau ki he fa'ahi 'oku ne fakahoko ha kole 'i he kupu si'i (1) ke ne fanongonongo 'a e kole ki he fa'ahi 'e taha.
- (3) Kapau 'oku pehe 'e he fakamaau'anga fakatonutonu kuo fakamo'oni 'i 'a e kole, kuo pau ke ne fakahoko 'a e fakalelei pe 'oatu 'a e faka'uhinga 'i loto 'i he 'aho 'e 30 mei hono ma'u 'o e kole.
- (4) Kuo pau ke hoko ha faka'uhinga 'oku tuku atu 'i he kupu si'i (3) ko e konga 'o e tu'utu'uni foaki.
- (5) 'E ngofua ke fakatonutonu 'e he fakamaau'anga fakatonutonu ha fehalaaki 'o e fa'ahinga 'oku 'uhinga ki ai 'i he kupu si'i (1)(a) 'i he'ene fokotu'u pe 'a'ana 'i loto 'i he 'aho 'e 30 mei he 'aho 'o e tu'utu'uni foaki.
- (6) 'E ngofua ke fakaloloa 'e he fakamaau'anga fakatonutonu, kapau 'e fiema'u, 'a e vaha'ataimi 'i loto 'a ia kuo pau ke fakahoko ai ha fakatonutonu pe ha faka'uhinga.

54 Tu'utu'uni foaki tanaki atu

- (1) Tuku kehe ha felotoi kehe 'a e ngaahi fa'ahi, 'e ngofua ke kole 'e ha fa'ahi ki he fakamaau'anga fakatonutonu, 'i loto 'i he 'aho 'e 30 mei hono ma'u 'o e tu'utu'uni foaki, ke fakahoko ha tu'utu'uni foaki tanaki atu ki he ngaahi 'eke kuo fakahu atu ki he ngaahi hopo fakatonutonu ka kuo to'o mei he tu'utu'uni.
- (2) Kapau 'oku pehe 'e he fakamaau'anga fakatonutonu kuo fakamo'oni 'i 'a e kole 'i he kupu si'i (1), kuo pau ke ne fakahoko 'a e tu'utu'uni foaki tanaki atu 'i loto 'i he 'aho 'e 60.
- (3) 'E ngofua ke fakaloloa 'e he fakamaau'anga fakatonutonu, kapau 'e fiema'u, 'a e vaha'ataimi 'i loto 'a ia kuo pau ke fakahoko ai ha tu'utu'uni foaki tanaki atu 'i he kupu si'i (2).

55 Ngaahi fakamole 'o e fakatonutonu

- (1) Koe'uhi ko e ngaahi taumu'a 'o e kupu 56 mo e 57, "ngaahi fakamole 'o e fakatonutonu" 'oku 'uhinga ia ki he –
 - (a) ngaahi totongi mo e ngaahi totongi fakamole 'o e kau fakatonutonu;
 - (b) ngaahi totongi mo e ngaahi totongi fakamole 'o ha sino fakatonutonu felave'i; mo e
 - (c) ngaahi totongi fakalao pe kehe 'o e ngaahi fa'ahi.
- (2) 'Oku kau 'i he lave ko ia 'a e ngaahi totongi 'o e pe felave'i mo ha ngaahi hopo ke tu'utu'uni ki he lahi 'o e ngaahi totongi 'o e fakatonutonu 'e ala ma'u.

56 Aleapau ke totongi 'a e ngaahi fakamole 'i ha me'a 'e hoko

Ko ha aleapau 'a ia 'oku pehe ke totongi 'e ha fa'ahi 'a e kotoa pe kong'a 'o e ngaahi fakamole 'o e fakatonutonu 'i he'ene hoko 'oku toki 'aonga pe ia kapau 'oku fakahoko 'i he hili 'a e kamata 'o e maumau 'oku 'eke.

57 Tu'utu'uni 'o e ngaahi fakamole

- (1) 'E ngofua ke fakahoko 'e he fakamaau'anga fakatonutonu ha tu'utu'uni ke vahe'i 'a e ngaahi fakamole 'o e fakatonutonu 'i he vaha'a 'o e ngaahi fa'ahi, 'o fakatatau ki ha aleapau 'a e ngaahi fa'ahi.
- (2) Tuku kehe ka felotoi kehe ange 'a e ngaahi fa'ahi, kuo pau ke tu'utu'uni foaki 'a e fakamaau'anga ki he ngaahi fakamole 'o makatu'unga 'i he 'uhinga angamaheni 'oku totonu ke fakahoko 'a e ngaahi fakamole 'o hange pe ko ia 'e hoko, tuku kehe kapau 'oku ha mai ki he fakamaau'anga 'oku 'ikai ke taau eni 'i he ngaahi tu'unga ko ia 'o felave'i ki he kotoa pe kong'a 'o e ngaahi fakamole.

KONGA 9 – TANGI KOE'UHI KO E TU'UTU'UNI FOAKI

58 Tohi kole ke tuku mavahe ko e tangi makehe koe'uhi ko e tu'utu'uni foaki fakatonutonu

- (1) 'E ngofua ke fakahoko ha tangi ki ha fakamaau'anga koe'uhi ko ha tu'utu'uni fakatonutonu 'aki pe ha tohi kole ke tuku mavahe 'o fakatatau ki he kupu si'i (2) mo e (3).
- (2) 'E ngofua ke tuku mavahe 'e he fakamaau'anga 'a e tu'utu'uni foaki fakatonutonu kapau –
 - (a) 'oku 'oatu 'e he fa'ahi 'oku ne fakahoko 'a e tohi kole ha fakamo'oni –
 - (i) na'e 'ikai malava 'e ha fa'ahi ki he aleapau fakatonutonu 'oku 'uhinga ki ai 'i he kupu 8 'o fakahoko fatongia; pe ko e aleapau 'oku lave ki ai 'oku 'ikai fakalao ia 'i he lao 'a ia kuo fili ki ai 'a e ngaahi fa'ahi pe, ko e 'ikai fakaha ia, 'i he ngaahi lao 'o Tonga;
 - (ii) na'e 'ikai 'oatu ki he fa'ahi 'oku ne fakahoko 'a e tohi kole ha fanongonongo totonu 'o e fokotu'u 'o ha taha fakatonutonu pe ko e ngaahi hopo fakatonutonu pe na'e 'ikai lava ke fakahu atu 'ene tafa'aki;
 - (iii) 'oku fekau'aki 'a e tu'utu'uni foaki ki ha maumau na'e 'ikai 'amanaki ki ai pe na'e 'ikai hoko 'i loto 'i he ngaahi tu'unga 'o e fokotu'u atu ki he fakatonutonu, pe kau ai 'a e ngaahi tu'utu'uni ki he ngaahi me'a 'oku 'ikai ke kau 'i he fokotu'u ki he fakatonutonu, ka kuo pau, kapau 'e lava ke fakamavahe 'a e ngaahi tu'utu'uni ki he ngaahi me'a kuo fokotu'u ki he fakatonutonu mei he ngaahi me'a ko ia kuo 'ikai fokotu'u atu, ko e konga pe ko ia 'o e tu'utu'uni 'a ia 'oku 'i ai 'a e ngaahi tu'utu'uni ki he ngaahi me'a na'e 'ikai fokotu'u ki he fakatonutonu 'e ngofua ke tuku mavahe; pe
 - (iv) ko e fa'unga 'o e fakamaau'anga fakatonutonu pe ko e ngaue 'a e fakatonutonu na'e 'ikai tatau mo e felotoi 'a e ngaahi fa'ahi, tuku kehe kapau na'e fepaki 'a e felotoi ko ia mo ha tu'utu'uni 'o e Lao ni 'a ia 'oku 'ikai lava 'a e ngaahi fa'ahi ke mavahe mei ai, pe, ka 'ikai fakahoko 'a e felotoi ko ia, na'e 'ikai fakatatau ki he Lao ni; pe
 - (b) 'oku 'ilo 'e he fakamaau'anga –
 - (i) 'oku 'ikai lava ke fakalelei 'a e tefito 'o e maumau 'aki 'a e fakatonutonu 'i he ngaahi lao 'o Tonga; pe
 - (ii) 'oku fepaki 'a e tu'utu'uni foaki mo e tu'utu'uni ngaue 'o Tonga.
- (3) 'E 'ikai ngofua ke fakahoko ha tohi kole ki ha tuku mavahe hili ha 'osi 'a e mahina 'e tolu mei he 'aho na'e ma'u ai 'e he fa'ahi 'oku ne fakahoko 'a e tohi kole 'a e tu'utu'uni foaki pe, kapau kuo fakahoko ha kole 'i he kupu 53 mo e

- 54, mei he 'aho 'a ia na'e tuku atu ai 'e he fakamaau'anga fakatonutonu 'a e kole ko ia.
- (4) 'E ngofua ki he fakamaau'anga, 'i hano kole ke tuku mavahe ha tu'utu'uni foaki, kapau 'e totonu pea kuo kole ia 'e ha fa'ahi, ke ta'ofi fakataimi 'a e ngaahi hopo ki he tuku mavahe ki ha vaha'ataimi kuo ne tu'utu'uni koe'uhi ke 'oatu ki he fakamaau'anga fakatonutonu ha faingamalie ke hoko atu 'a e ngaahi hopo fakatonutonu pe ke fakahoko ha ngaue kehe 'a ia 'i he vakai 'a e fakamaau'anga fakatonutonu te ne tamate'i 'a e ngaahi 'uhinga ki hano tuku mavahe.

KONGA 10 – TALI MO E FAKAHOKO 'O E NGAHI TU'UTU'UNI FOAKI

59 Tali mo e fakahoko 'o ha tu'utu'uni foaki

- (1) Kuo pau ko e tu'utu'uni foaki fakatonutonu, 'o tatau ai pe pe ko fe 'a e fonua na'e fakahoko ai, ke tali ia 'oku ne ha'i pea, 'i ha tohi kole 'i he tohi ki he fakamaau'anga, kuo pau ke fakahoko 'o fakatatau ki he kupu ni mo e kupu 60.
- (2) Kuo pau ko e tohi kole ki hono tali mo e fakahoko 'o ha tu'utu'uni foaki fakatonutonu ke fakahoko ia 'o 'ikai toe tomui ange 'i he ta'u 'e ono mei he 'aho 'o e tu'utu'uni.
- (3) Kuo pau ki he fa'ahi 'oku fakafalala ki ha tu'utu'uni foaki pe kole ki hono fakahoko ke ne 'oatu 'a e tatau mo'oni 'o e tu'utu'uni foaki pe ko ha tatau 'o ia.
- (4) 'E ngofua ke kole 'e he fakamaau'anga kapau 'oku 'ikai fakahoko 'a e tu'utu'uni foaki 'i he lea faka-Pilitania, ke 'oatu 'e he fa'ahi ha fakatonu lea 'o ia.

60 Ngaahi tu'unga ke 'ikai tali pe fakahoko ha tu'utu'uni foaki

- (1) 'E ngofua ke 'ikai tali pe fakahoko 'e he fakamaau'anga ha tu'utu'uni foaki fakatonutonu, 'o tatau pe ko fe 'a e fonua 'a ia na'e fakahoko ai, kapau pe –
- (a) 'i hono kole 'e he fa'ahi 'a ia 'oku tangi fekau'aki mo ia, kapau 'e 'oatu 'e he fa'ahi ko ia 'a e fakamo'oni ki he fakamaau'anga 'oku 'oatu ki ai 'a e 'eke ke tali mo fakahoko –
- (i) na'e 'ikai malava ke ne fakahoko; pe ko e aleapau ko ia 'oku 'ikai fakalao ia 'i he lao 'a ia kuo fili ki ai 'a e ngaahi fa'ahi pe, ko e 'ikai fakaha ia, 'i he lao 'o e fonua na'e fakahoko ai 'a e tu'utu'uni;
- (ii) na'e 'ikai 'oatu ki he fa'ahi 'a ia 'oku tangi fekau'aki mo ia ha fanongonongo totonu 'o e fokotu'u 'o ha taha fakatonutonu pe ko e ngaahi hopo fakatonutonu pe na'e 'ikai lava ke fakahu atu 'ene tafa'aki;

- (iii) 'oku fekau'aki 'a e tu'utu'uni foaki ki ha maumau na'e 'ikai 'amanaki ki ai pe na'e 'ikai hoko 'i loto 'i he ngaahi tu'unga 'o e fokotu'u atu ki he fakatonutonu, pe kau ai 'a e ngaahi tu'utu'uni ki he ngaahi me'a 'oku 'ikai ke kau 'i he fokotu'u ki he fakatonutonu, ka kuo pau, kapau 'e lava ke fakamavahe 'a e ngaahi tu'utu'uni ki he ngaahi me'a kuo fokotu'u ki he fakatonutonu mei he ngaahi me'a ko ia kuo 'ikai fokotu'u atu, ko e konga pe ko ia 'o e tu'utu'uni 'a ia 'oku 'i ai 'a e ngaahi tu'utu'uni foaki ki he ngaahi me'a na'e fokotu'u ki he fakatonutonu 'e ngofua ke tali mo fakahoko;
- (iv) ko e fa'unga 'o e fakamaau'anga fakatonutonu pe ko e founa ngaue 'a e fakatonutonu na'e 'ikai tatau mo e felotoi 'a e ngaahi fa'ahi pe, ka 'ikai fakahoko 'a e felotoi ko ia, na'e 'ikai fakataau ki he Lao 'a e fonua na'e fakahoko ai 'a e fakatonutonu; pe
- (v) 'oku te'eki ke ha'i 'e he tu'utu'uni foaki 'a e ngaahi fa'ahi pe kuo tuku mavahe pe ta'ofi fakataimi 'e ha fakamaau'anga 'o e fonua 'a ia, pe ko e lao ko ia, na'e fakahoko ai 'a e tu'utu'uni foaki; pe
- (b) 'oku 'ilo 'e he fakamaau'anga –
 - (i) 'oku 'ikai lava ke fakalelei 'a e tefito 'o e maumau 'aki 'a e fakatonutonu 'i he ngaahi lao 'o Tonga; pe
 - (ii) 'oku fepaki 'a e tu'utu'uni foaki ki hono tali mo ngaue'aki mo e tu'utu'uni ngaue 'o Tonga.
- (2) Kapau kuo fakahoko ha tohi kole ki hono tuku mavahe pe toloi fakataimi ha tu'utu'uni ki ha fakamaau'anga 'oku 'uhinga ki ai 'i he kupu si'i (1)(a)(v), 'e ngofua ki he fakamaau'anga kuo 'oatu ki ai 'a e 'eke ke tali mo fakahoko, kapau 'oku ne pehe 'oku totonu, ke ne toloi 'ene tu'utu'uni pea 'e ngofua foki, 'i ha tohi kole 'a e fa'ahi 'oku ne 'eke 'a e tali pe fakahoko 'o e tu'utu'uni, ke tu'utu'uni ke 'oatu 'e he fa'ahi 'e taha 'a e malu'i totonu.

61 Fakamo'oni 'o e ngaahi tu'utu'uni foaki mo e ngaahi aleapau fakatonutonu

- (1) 'I ha ngaahi hopo 'a ia 'oku 'eke ai 'e ha fa'ahi 'a hono fakahoko 'o ha tu'utu'uni foaki koe'uhi ko e Konga ni, kuo pau ke ne 'oatu ki he fakamaau'anga 'a e –
 - (a) tatau totonu mo'oni 'o e tu'utu'uni foaki pe ko ha tatau totonu kuo fakamo'oni'i; mo e
 - (b) tatau mo'oni 'o e aleapau fakatonutonu 'a ia 'oku pehe na'e fakahoko mei ai 'a e tu'utu'uni pe ko ha tatau totonu kuo fakamo'oni'i.
- (2) Koe'uhi ko e taumu'a 'o e kupu si'i (1), kuo pau ke lau kuo fakamo'oni'i totonu ha tu'utu'uni foaki, pea kuo pau ke lau kuo fakamo'oni'i totonu ha tatau 'o e tu'utu'uni pe aleapau, kapau –

- (a) 'oku pehe kuo fakapapau'i pe fakamo'oni'i, ko e ha pe me'a 'e hoko, 'e ha taha fakatonutonu pe, kapau ko e taha fakatonutonu ko ha fakamaau'anga, 'e ha 'ofisa 'o e fakamaau'anga ko ia, pea 'oku te'eki ai ke fakaha ki he fakamaau'anga na'e 'ikai fakapapau'i pe fakamo'oni'i ia; pe
- (b) kuo fakapapau'i pe fakamo'oni'i kehe ange ki he fiemalie 'a e fakamaau'anga.
- (3) Kapau ko e tohi ngaue pe konga 'o e tohi ngaue 'oku 'oatu 'i he kupu si'i (1) 'oku tohi ia 'i ha lea kehe ange mei he faka-Pilitania, kuo pau ke 'oatu fakataha mo e tohi ngaue ha fakatonu lea, 'i he lea faka-Pilitania, 'o e tohi ngaue pe ko e konga ko ia, ko e ha pe me'a 'e hoko, 'a ia kuo fakamo'oni'i ko e fakatonu lea totonu.
- (4) Koe'uhi ko e ngaahi taumu'a 'o e kupu si'i (3), kuo pau ke fakamo'oni'i ha fakatonu lea 'e ha fakafofonga fakatipilometika pe fakafofonga konisela ki Tonga 'o e fonua 'a ia na'e fakahoko ai 'a e tu'utu'uni pe 'i ha founga kehe ki he fiemalie 'a e fakamaau'anga.
- (5) Ko ha tohi ngaue kuo 'oatu ki ha fakamaau'anga 'o fakatatau ki he kupu ni, 'i hono 'oatu pe, 'e ala tali ia 'e he fakamaau'anga ko e fakamo'oni 'o e ngaahi me'a 'a ia 'oku felave'i mo ia.

KONGA 11 – ME'A KEHEKEHE

62 Ngaahi Tu'utu'uni

'E ngofua ki he Minisita 'i he loto ki ai 'a e Kapineti ke ne fa'u ha ngaahi tu'utu'uni ki hono fakahoko taau mo fe'unga 'o e Lao ni.

Na'e tali 'e he Fale Alea 'i he 'aho 'o 2020.

TEPILE

Konivesio ki hono Tali mo e Fakahoko 'o e Ngaahi Tu'utu'uni Fakatonutonu
Muli (1958)

'Atikolo I

1. Kuo pau ke ngaue'aki 'a e Konivesio ko eni ki hono tali mo e fakahoko 'o e ngaahi tu'utu'uni fakatonutonu 'oku fakahoko 'i he mafai 'o ha Fonua 'o kehe ange mei he Fonua 'oku 'eke ai 'a hono tali mo e fakahoko 'o e tu'utu'uni ko ia, pea tupu ai ha faikehekehe 'o ha ni'ihii, 'o tatau ai pē pe fakaesino pe fakalao. Kuo pau ke toe ngaue'aki eni ki he ngaahi tu'utu'uni fakatonutonu 'oku 'ikai ke lau ko ha ngaahi tu'utu'uni fakalotofonua 'i he Fonua 'a ia 'oku 'eke ai 'a hono tali mo e fakahoko.
2. Kuo pau ke kau 'i he ngaahi lea "ngaahi tu'utu'uni fakatonutonu" 'o 'ikai ngata pē 'i he ngaahi tu'utu'uni 'oku fakahoko 'e he kau fakatonutonu kuo fokotu'u ki he hopo taki taha kae kau atu foki mo ia 'oku fakahoko 'e he ngaahi sino fakatonutonu tu'uma'u 'a ia kuo fakahu atu 'e he ngaahi fa'ahi.
3. 'I he fakamo'oni hingo, tali pe ngaue'aki 'a e Konivesio ko eni, pe fakaha 'a hono ngaue'aki 'i he 'atikolo X, 'e ngofua ki ha Fonua 'o makatu'unga 'i he fengaue'aki ke ne fakaha te ne toki ngaue'aki pē 'a e Konivesio ki hono tali mo e fakahoko 'o e ngaahi tu'utu'uni 'oku fakahoko 'i he fonua 'o ha Fonua Aleapau kehe. 'E toe ngofua ke ne fakaha te ne toki ngaue'aki pē 'a e Konivesio ki ha ngaahi faikehekehe 'oku tupu mei ha ngaahi vā fakalao, 'o tatau ai pē pe 'i ha aleapau pe 'ikai, 'a ia 'oku lau 'oku fakakomesiale 'i he lao fakafonua 'o e Fonua 'oku ne fakahoko 'a e fakaha ko ia.

'Atikolo II

1. Kuo pau ke tali 'e he Fonua Aleapau taki taha ha aleapau 'i he tohi 'a ia 'oku felotoi ai 'a e ngaahi fa'ahi ke fakahu atu ki he fakatonutonu 'a e kotoa pe ni'ihii 'o e ngaahi faikehekehe 'a ia kuo tupu pe malava ke tupu 'ia kinautolu 'o fekau'aki mo ha vā fakalao kuo fakamahino, 'o tatau ai pē pe 'i ha aleapau pe 'ikai, 'o felave'i mo ha me'a 'oku malava ke fakalelei'i 'aki 'a e fakatonutonu.
2. Kuo pau ke kau 'i he kupu'i lea "aleapau 'i he tohi" ha kupu fakatonutonu 'i ha aleapau pe ha aleapau fakatonutonu, 'o fakamo'oni hingo ki ai 'a e ngaahi fa'ahi pe fakakau 'i ha fakafetongi 'o e ngaahi tohi pe telekalama.
3. Kuo pau ki he fakamaau'anga 'o ha Fonua Aleapau, 'i he taimi 'oku 'oatu ki ai ha 'eke 'o fekau'aki mo ha me'a na'e 'osi felotoi ki ai 'a e ngaahi fa'ahi 'i loto 'i he 'uhinga 'o e 'atikolo ko eni, 'i he kole ha taha 'o e ngaahi fa'ahi, ke 'ave 'a e ngaahi

fa'ahi ki he fakatonutonu, tuku kehe ka 'oku ne pehe 'oku ta'e'aonga mo ta'efakalao, 'ikai ngaue'aki pe 'ikai malava ke fakahoko 'a e aleapau felave'i.

'Atikolo III

Kuo pau ke tali 'e he Fonua Aleapau taki taha 'a e ngaahi tu'utu'uni fakatonutonu ke fakalao pea fakahoko ia 'o fakatatau ki he ngaahi tu'utu'uni 'o e founa ngaue 'a e mafai 'oku makatu'unga ai 'a e tu'utu'uni, 'i he ngaahi tu'unga 'oku fokotu'u atu 'i he ngaahi 'atikolo ko eni. Kuo pau ke 'ikai hilifaki mamafa ange ha ngaahi tu'unga pe ngaahi totongi (fees) pe ngaahi totongi (charges) ma'olunga ange ki hono tali pe fakahoko 'o e ngaahi tu'utu'uni fakatonutonu 'a ia 'oku ngaue'aki ki ai 'a e Konivesio ko eni 'i he me'a 'oku hilifaki ki hono tali pe fakahoko 'o e ngaahi tu'utu'uni fakatonutonu fakalotofonua.

'Atikolo IV

1. Koe'uhi ke ma'u 'a e tali mo e fakahoko 'a ia 'oku hā 'i he 'atikolo kimu'a, kuo pau ki he fa'ahi 'oku kole ki hono tali mo e fakahoko, 'i he taimi 'o e tohi kole, ke 'oatu 'a e:
 - (a) Tatau totonu 'o e tu'utu'uni kuo fakapapau'i pe ha tatau 'o ia kuo fakamo'oni'i;
 - (b) Aleapau totonu 'oku lave ki ai 'i he 'atikolo II pe ha tatau 'o ia kuo fakamo'oni'i.
2. Kapau 'oku 'ikai fakahoko 'a e tu'utu'uni pe aleapau 'i he lea faka'ofisiale 'o e fonua 'oku makatu'unga ai 'a e tu'utu'uni, kuo pau ke 'oatu 'e he fa'ahi 'oku kole 'a hono tali mo e fakahoko 'o e tu'utu'uni ha fakatonu lea 'o e ngaahi tohi ngaue ko eni ki he lea ko ia. Kuo pau ke fakamo'oni'i 'a e fakatonu lea ko ia 'e ha taha fakatonu lea faka'ofisiale pe kuo fuakava pe 'e ha fakafofonga fakatipilometika pe konisela.

'Atikolo V

1. 'E ngofua ke 'ikai tali pe fakahoko ha tu'utu'uni, 'i hono kole 'e he fa'ahi 'a ia 'oku tangi fekau'aki mo ia, kapau 'e 'oatu 'e he fa'ahi ko ia 'a e fakamo'oni ki he ma'u mafai pule 'a ia na'e 'oatu ki ai 'a e 'eke ke tali mo fakahoko:
 - (a) Ko e ngaahi fa'ahi ki he aleapau 'oku lave ki ai 'i he 'atikolo II 'i he lao 'a ia kuo fili ki ai 'a e ngaahi fa'ahi na'e 'ikai malava ke ne fakahoko, pe ko e aleapau ko ia 'oku 'ikai fakalao ia 'i he lao 'a ia kuo fili ki ai 'a e ngaahi fa'ahi pe, ko e 'ikai fakaha ia, 'i he lao 'o e fonua na'e fakahoko ai 'a e tu'utu'uni; pe
 - (b) Na'e 'ikai 'oatu ki he fa'ahi 'a ia 'oku tangi fekau'aki mo ia ha fanongonongo totonu 'o e fokotu'u 'o ha taha fakatonutonu pe ko e ngaahi hopo fakatonutonu pe na'e 'ikai lava ke fakahu atu 'ene tafa'aki; pe
 - (c) 'Oku fekau'aki 'a e tu'utu'uni ki ha maumau na'e 'ikai 'amanaki ki ai pe na'e 'ikai hoko 'i loto 'i he ngaahi tu'unga 'o e fokotu'u atu ki he fakatonutonu, pe kau ai 'a e ngaahi tu'utu'uni ki he ngaahi me'a 'oku 'ikai ke kau 'i he fokotu'u

ki he fakatonutonu, ka kuo pau, kapau 'e lava ke fakamavahe 'a e ngaahi tu'utu'uni ki he ngaahi me'a kuo fokotu'u ki he fakatonutonu mei he ngaahi me'a ko ia kuo 'ikai fokotu'u atu, ko e konga pe ko ia 'o e tu'utu'uni 'a ia 'oku 'i ai 'a e ngaahi tu'utu'uni ki he ngaahi me'a na'e fokotu'u ki he fakatonutonu 'e ngofua ke tali mo fakahoko:

- (d) ko e fa'unga 'o e fakamaau'anga fakatonutonu pe ko e founa ngaue 'a e fakatonutonu na'e 'ikai tatau mo e felotoi 'a e ngaahi fa'ahi pe, ka 'ikai fakahoko 'a e felotoi ko ia, na'e 'ikai fakataau ki he lao 'a e fonua na'e fakahoko ai 'a e fakatonutonu; pe
 - (e) 'oku te'eki ke ha'i 'e he tu'utu'uni 'a e ngaahi fa'ahi pe kuo tuku mavahe pe ta'ofi fakataimi 'e ha ma'u mafai fe'unga 'o e fonua 'a ia, pe ko e lao ko ia, na'e fakahoko ai 'a e tu'utu'uni.
2. 'E ngofua ke 'ikai tali mo fakahoko ha tu'utu'uni fakatonutonu kapau 'oku 'ilo 'e he ma'u mafai fe'unga 'i he fonua 'oku 'eke ai 'a hono tali mo e fakahoko –
- (a) 'oku 'ikai lava ke fakalelei 'a e tefito 'o e maumau 'aki 'a e fakatonutonu 'i he lao 'o e fonua ko ia; pe
 - (b) 'oku fepaki 'a hono tali pe fakahoko 'o e tu'utu'uni ki he tu'utu'uni ngaue fakapule'anga 'o e fonua ko ia.

'Atikolo VI

Kapau kuo fakahoko ha tohi kole ki hono tuku mavahe pe fakataimi 'o e tu'utu'uni ki ha ma'u mafai fe'unga 'oku lave ki ai 'a e 'atikolo V(1)(e), 'e ngofua ki he ma'u mafai 'a ia 'oku kole ki ai 'a e tu'utu'uni 'oku makatu'unga ai 'a e kole, kapau 'oku ne pehe 'oku taau, ke toloi 'a e tu'utu'uni ki hono fakahoko 'a e tu'utu'uni pea 'e toe ngofua, 'i he tohi kole 'a e fa'ahi 'oku ne 'eke 'a e fakahoko 'o e tu'utu'uni, ke ne tu'utu'uni ki he fa'ahi 'e taha ke 'oatu 'a e malu'i fe'unga.

'Atikolo VII

- 1. Kuo pau ke 'ikai uesia 'e he ngaahi tu'utu'uni 'o e Konivesio lolotonga 'a e 'aonga fakalao 'o e ngaahi aleapau fakatokolahi pe fakafa'ahi ua 'oku felave'i mo hono tali mo fakahoko 'o e ngaahi tu'utu'uni fakatonutonu kuo kau atu ki ai 'a e ngaahi Fonua Aleapau pe to'o mei ha fa'ahi fekau'aki ha totonu 'oku ne ma'u ke faka'ataa ia mei ha tu'utu'uni fakatonutonu 'i he founa pea ki he ngata'anga 'oku fakangofua 'e he lao pe ko e ngaahi talite 'o e fonua 'oku makatu'unga ai 'a e kole ki he tu'utu'uni ko ia.
- 2. Kuo pau ko e Geneva Protocol on Arbitration Clauses 'o e 1923 mo e Geneva Convention on the Execution of Foreign Arbitral Awards 'o e 1927 'oku ngata 'a hono ngaue'aki 'i he vaha'a 'o e ngaahi Fonua Aleapau 'i hono ha'i fakalao kinautolu pea ki he tu'unga 'oku ha'i fakalao ai kinautolu, 'e he Konivesio ko eni.

'Atikolo VIII

1. Kuo pau ke 'ataa 'a e Konivesio ko eni 'o a'u ki he 'aho 31 'o Tisema 1958 ki ha fakamo'oni hingoa ke fakafofonga'i ha Memipa 'o e Ngaahi Pule'anga Fakatahataha pea mo toe fakafofonga'i ha Fonua kehe 'a ia kuo hoko pe 'e hoko ko ha memipa 'o ha sino makehe 'o e Ngaahi Pule'anga Fakatahataha, pe kuo hoko pe 'e hoko ko ha fa'ahi ki he Lao 'o e Fakamaau'anga Fakavaha'apule'anga, pe ha Fonua kehe kuo 'oatu ki ai ha fakaafe mei he Fakataha'anga Lahi 'o e Ngaahi Pule'anga Fakatahataha.
2. Kuo pau ke tali 'a e Konivesio ko eni pea kuo pau ke fakahu atu 'a hono tali ki he Sekelitali-Seniale 'o e Ngaahi Pule'anga Fakatahataha.

'Atikolo IX

1. Kuo pau ke 'ataa ke ngaue'aki 'a e Konivesio ko eni ki he ngaahi Fonua kotoa 'oku lave ki ai 'a e 'atikolo VIII.
2. Kuo pau ke kamata lau 'a hono ngaue'aki 'i he fakahu atu ha tohi 'o e ngaue'aki ki he Sekelitali-Seniale 'o e Ngaahi Pule'anga Fakatahataha.

'Atikolo X

1. 'E ngofua ki ha Fonua, 'i he taimi 'o e fakamo'oni hingoa, tali pe ngaue'aki, ke fakaha kuo pau ke ngaue'aki 'a e Konivesio ko eni ki he kotoa pe ni'ihi 'o e ngaahi fonua ki he ngaahi va fakavaha'apule'anga 'oku ne tokangaekina. Kuo pau ke kamata ngaue'aki 'a e fakaha ko ia 'i he taimi 'oku kamata ngaue'aki ai 'a e Konivesio ma'ae Fonua felave'i.
2. 'I ha fa'ahinga taimi pe mei ai kuo pau ke fanongonongo 'a e ngaue'aki ko ia 'o fakatu'asila ki he Sekelitali-Seniale 'o e Ngaahi Pule'anga Fakatahataha pea kuo pau ke kamata ngaue'aki hili 'a e 'aho 'e hivanoa mei he 'aho na'e ma'u ai 'e he Sekelitali-Seniale 'a e fanongonongo ko eni, pe mei he 'aho na'e kamata ngaue'aki ai 'a e Konivesio 'e he Fonua felave'i, pe ko fe pe na'e hoko kimui ange.
3. 'I he'ene fekau'aki mo e ngaahi fonua 'oku te'eki ke ngaue'aki ki ai 'a e Konivesio ko eni 'i he taimi 'o e fakamo'oni hingoa, tali pe ngaue'aki, kuo pau ke fakatokanga'i ange 'e he Fonua taki taha 'a e malava ke fakahoko 'a e ngaahi founa 'e fiema'u koe'uhi ke fakaa'u ai 'a hono ngaue'aki 'o e Konivesio ko eni ki he ngaahi fonua ko ia, 'o fakataau, 'i hano fiema'u ki ha ngaahi 'uhinga fakakonisitutone, 'a e loto ki ai 'a e ngaahi Pule'anga 'o e ngaahi fonua ko ia.

'Atikolo XI

Kapau ko ha Fonua 'oku pule'anga fakatahataha (federal) pe 'ikai fakatahataha, kuo pau ke ngaue'aki 'a e ngaahi tu'utu'uni ko eni –

- (a) 'I he'ene fekau'aki mo e ngaahi 'atikolo ko ia 'o e Konivesio ko eni 'oku fakakau 'i he mafai fakalao 'o e ma'u mafai fakatahataha (federal), kuo pau ke tatau pe 'a e

ngaahi fatongia 'o e Pule'anga fakatahataha (federal) 'i he tu'unga ko ia mo ia 'o e ngaahi Fonua Aleapau 'oku 'ikai ko ha ngaahi Pule'anga fakatahataha (federal);

- (b) 'I he'ene fekau'aki mo e ngaahi 'atikolo ko ia 'o e Konivesio ko eni 'oku fakakau 'i he mafai fa'u lao 'o e ngaahi pule'anga pe vahefonua 'a ia 'oku 'ikai, 'i he malumalu 'o e fa'unga fakakonisitutone 'a e pule'anga fakatahataha (federal), ha'i fakalao kinautolu ke nau fakahoko ha ngaue fa'u lao, kuo pau ke 'omai 'e he Pule'anga fakatahataha (federal) 'a e ngaahi 'atikolo ko ia fakataha mo ha fokotu'u lelei ke fanongonongo ki he ngaahi ma'u mafai felave'i 'o e ngaahi fonua pe vahefonua 'i he vave taha 'e ala lava;
- (c) Kuo pau ki ha Fa'ahi Pule'anga fakatahataha (federal) ki he Konivesio ko eni ke, 'i he kole 'a ha Fonua Aleapau kehe 'a ia 'oku 'oatu 'o fakafou 'i he Sekelitali-Seniale 'o e Ngaahi Pule'anga Fakatahataha, 'oatu ha tohi ngaue 'o e lao mo e founa ngaue 'a e pule'anga fakatahataha (federal) mo hono ngaahi 'iuniti fakavahefonua 'o felave'i mo ha tu'utu'uni pau 'o e Konivesio ko eni, 'o fakaha ai 'a e ngata'anga 'o hono ngaue'aki 'a e tu'utu'uni ko ia 'i ha ngaue fa'u lao pe ngaue kehe.

'Atikolo XII

1. Kuo pau ke kamata ngaue'aki 'a e Konivesio ko eni 'i he hili 'a e 'aho 'e hivanoa mei he 'aho na'e fakahu atu ai 'a e tohi fakamo'oni pe tali hono tolu.
2. Ko e Fonua taki taha 'oku ne tali pe ngaue'aki 'a e Konivesio ko eni hili 'a hono fakahu atu 'a e tohi fakamo'oni 'o e tali pe ngaue'aki hono tolu, kuo pau ke kamata ngaue'aki 'a e Konivesio ko eni 'i he hili 'a e 'aho 'e hivanoa mei hono fakahu atu 'e he Fonua ko ia 'a 'ene tohi fakamo'oni 'o e tali pe ngaue'aki.

'Atikolo XIII

1. 'E ngofua ki ha Fonua Aleapau ke ne fakata'e'aonga'i 'a e Konivesio ko eni 'aki ha fanongonongo tohi ki he Sekelitali-Seniale 'o e Ngaahi Pule'anga Fakatahataha. Kuo pau ke kamata ngaue'aki 'a hono fakata'e'aonga ko eni hili ha ta'u 'e taha mei he 'aho na'e ma'u ai 'e he Sekelitali-Seniale 'a e fanongonongo.
2. 'E ngofua ki ha Fonua kuo ne fakahoko ha fakaha pe fanongonongo 'i he 'atikolo X, 'i ha fa'ahinga taimi pē hili ia, 'i ha fanongonongo ki he Sekelitali-Seniale 'o e Ngaahi Pule'anga Fakatahataha, ke fakaha kuo pau ke ngata 'a hono ngaue'aki 'o e Konivesio ko eni ki he fonua felave'i hili ha ta'u 'e taha mei he 'aho na'e ma'u ai 'e he Sekelitali-Seniale 'a e fanongonongo.
3. Kuo pau ke hokohoko atu pē 'a hono ngaue'aki 'a e Konivesio ko eni ki he ngaahi tu'utu'uni fakatonutonu 'o fekau'aki mo e ngaahi hopo ki hono tali pe ngaue'aki 'a ia kuo kamata kimu'a 'a e kamata ngaue'aki 'o e fakata'e'aonga.

'Atikolo XIV

Kuo pau ke 'ikai 'i ai ha totonu ha Fonua Aleapau ke ne faka'ataa ia mei he Konivesio lolotonga 'o fekau'aki mo e ngaahi Fonua Aleapau kehe tuku kehe kapau 'oku 'i he tu'unga 'oku pau pē 'iate ia ke ne ngaue'aki 'a e Konivesio.

'Atikolo XV

Kuo pau ke fanongonongo 'e he Sekelitali-Seniale 'o e Ngaahi Pule'anga Fakatahataha ki he ngaahi Fonua 'oku fakakau 'i he 'atikolo VIII 'a e ngaahi me'a ni –

- (a) Ngaahi fakamo'oni hingoa mo e ngaahi tali 'o fakatatau ki he 'atikolo VIII;
- (b) Ngaue'aki 'o fakatatau ki he 'atikolo IX;
- (c) Ngaahi fakaha mo e ngaahi fanongonongo 'i he 'atikolo I, X and XI;
- (d) Ko e 'aho 'oku kamata ngaue'aki ai 'a e Konivesio ko eni 'o fakatatau ki he 'atikolo XII;
- (e) Ngaahi fakata'e'aonga mo e ngaahi fanongonongo 'o fakatatau ki he 'atikolo XIII.

'Atikolo XVI

1. Ko e Konivesio ko eni, 'a ia kuo pau ke falala'anga tatau ai 'a e ngaahi tohi 'i he lea faka-Siaina, faka-Pilitania, faka-Falanise, faka-Lūsia mo e lea faka-Sepeni, kuo pau ke tauhi 'i he tauhi'anga tohi fakapule'anga 'o e Ngaahi Pule'anga Fakatahataha.
2. Kuo pau ke 'ave 'e he Sekelitali-Seniale 'o e Ngaahi Pule'anga Fakatahataha ha tatau kuo fakamo'oni 'i 'o e Konivesio ko eni ki he ngaahi Fonua 'oku fakakau 'i he 'atikolo VIII.

FAKAMATALA FAKAMAHINO

(‘Oku ‘ikai ke hoko ‘a e ngaahi fakamatala ni ko ha konga ‘o e Lao Fakaangaanga, pea ‘oku fakataumu‘a pe ke fakamatala‘i ‘a hono ngaue‘aki mo e taumu‘a)

‘Oku tu‘utu‘uni ‘a e Lao Fakaangaanga ni ki hono fakalelei ‘o e ngaahi maumau fakakomesiale fakavaha‘apule‘anga ‘aki ‘a e fakatonutonu, ko hono tali mo e fakahoko ‘o e ngaahi tu‘utu‘uni fakatonutonu mo e ngaahi me‘a felave‘i mo ia. ‘Oku fakamatala‘i atu ‘i lalo ‘a e ngaahi lelei tefito ‘o e fakatonutonu –

‘Oku ‘i ai ‘a e ngaahi faikehekehe lahi ‘i he vaha‘a ‘o e fakatonutonu mo e hopo. Ko e ‘uluaki ‘oku fili ‘e he ngaahi fa‘ahi ki ha fakatonutonu ‘a ‘enau taha faitu‘utu‘uni pe taha fakatonutonu ‘a kinautolu pe. ‘I he taimi lahi ‘oku feangai ‘a e taha fakatonutonu pea mo e ngaahi me‘a fakatekinikale ‘oku felave‘i mo e kaveinga ‘o e maumau pe ‘oku ne ma‘u ‘ilo taukei ‘a ia ‘oku felave‘i mo e kaveinga ‘o e maumau. ‘Oku angamaheni ‘aki ‘a e vave ange hono fakalelei ‘o e maumau ‘aki ‘a e fakatonutonu ‘i hano fakahoko ‘o fou ‘i he ngaahi founga ngaue fakafakamaau‘anga. ‘I he angamaheni ‘e ala vave ange hono fakahoko ha fakatonutonu ‘i he taimi ‘e fiema‘u ke a‘u ai ha hopo ki he fakamaau‘anga. Ko e fakatonutonu ‘oku tauhi ange ai ‘a e malu ‘i he ngaahi fakatonutonu fakafakamaau‘anga ‘oku angamaheni ke ‘ikai tauhi ai ‘a e malu. ‘Oku ‘ikai fakahoko faka‘ofisiale ‘a e fakatonutonu ‘o hange ko ha hopo fakafakamaau‘anga. Neongo ko e fakatonutonu kuo pau ke fua ‘e he ngaahi fa‘ahi ‘a e fakamole ‘o e fakamaau‘anga fakatonutonu, ka ‘i he ngaahi hiki lahi fakamuimui ko eni ‘i he ngaahi totongi fakamaau‘anga ‘oku ‘ikai ke na fu‘u faikehekehe.¹

‘Oku taumu‘a ‘a e Lao Fakaangaanga ke ngaue‘aki ‘a e Konivesio ki hono Tali mo e Fakahoko ‘o e Ngaahi Tu‘utu‘uni Fakatonutonu Muli (1958) na‘e tali ke ngaue‘aki ‘e he Pule‘anga ‘o Tonga ‘i he ‘aho 12 ‘o Sune 2020. Ko e lahi taha ‘o e ngaahi kupu ‘o e Lao Fakaangaanga ni ‘oku to‘o mei he UNCITRAL² Lao Fakaangaanga ki he Fakatonutonu Fakakomesiale Fakavaha‘apule‘anga.³ Ko e ngaahi kupu kehe ‘oku to‘o ia mei he lao fakatonutonu ‘o Pilitania, ‘Aositelelia mo Nu‘usila.

Ko e Lao Fakaangaanga ‘oku ‘i ai hono ngaahi konga tefito ‘e 11. Ko e ngaahi fakamatala fakalukufua eni ‘o e konga taki taha –

Konga 1 ‘oku ‘i ai ‘a e ngaahi kupu tu‘upau ‘o ha Lao, ‘a ia ko e hingoa nounou, ko e ‘aho kamata ngaue‘aki, ‘uhinga‘i lea ‘o e ngaahi lea pau mo hono ha‘i ‘e he Lao Fakaangaanga ‘a e Kalauni.

1 ¹ ‘Kau Fakatonutonu’ mo e Kau Fakalelei Va’ Institute of New Zealand Inc., (2004) *Guide to Arbitration*, 1, at

https://www.aminz.org.nz/Folder?Action=View%20File&Folder_id=4&File=Guide%20to%20Arbitration.pdf (a‘u ki ai ‘i he ‘aho 2 ‘Okatopa 2020).

2 ² Komisoni ‘a e Ngaahi Pule‘anga Fakatahataha ‘i he Lao Fefakatau‘aki Fakavaha‘apule‘anga.

3 ³ UNCITRAL Lao Fakaangaanga ‘i he Fakatonutonu Fakakomesiale Fakavaha‘apule‘anga ‘a ia ‘oku ngaue‘aki ‘e he Komisoni ‘a e Ngaahi Pule‘anga Fakatahataha ‘i he Lao ki he Fefakatau‘aki Fakavaha‘apule‘anga ‘i he ‘aho 21 Sune 1985, pea ‘i hono fakatonutonu ‘e he Komisoni ‘a e Ngaahi Pule‘anga Fakatahataha ‘i he Lao ki he Fefakatau‘aki Fakavaha‘apule‘anga ‘i he ‘aho 7 ‘o Siulai 2006).

Konga 2 'oku 'i ai 'a e ngaahi kupu angamaheni 'o e Lao Fakaangaanga. 'Oku tu'utu'uni 'e he kupu 4 ke ngaue'aki 'a e Lao ki he fakatonutonu fakakomesiale fakavaha'apule'anga pea mo fakamahino 'a ia 'oku kau 'i ha fakatonutonu fakavaha'apule'anga. 'Oku tuku atu 'i he kupu 5 'a e ngaahi taumu'a 'o e Lao Fakaangaanga 'a ia 'oku 'uhinga ki ai 'i 'olunga.

Konga 3 'oku ne fakamahino 'a e aleapau fakatonutonu mo e me'a 'e hoko 'i he taimi 'oku 'ave ai ha me'a 'a ia ko e kaveinga 'o ha aleapau fakatonutonu ki he fakamaau'anga. 'Oku tu'utu'uni 'e he kupu 10 'oku 'ikai tukuange ha aleapau fakatonutonu 'o tu'unga 'i ha pekia, mo'ua hulu 'ikai lava ke totongi pe tamate 'i 'o ha fa'ahi.

Konga 4 'oku ne tuku atu 'a e fa'unga 'o ha fakamaau'anga fakatonutonu. 'E malava ke felotoi ha ngaahi fa'ahi ki ha aleapau fakatonutonu ki he tokolahi 'o e kau fakatonutonu ka 'ikai 'oku tu'utu'uni 'e he kupu 12 ko e tokolahi 'o e kau fakatonutonu kuo pau ko e toko tolu. 'Oku tuku atu 'e he ngaahi kupu 'oku hoko mai 'a e founa ki hono fokotu'u 'o e kau fakatonutonu 'e toko tolu, ko e ngaahi tu'unga mo e founa ngaue ki hono fakafepaki 'i ha taha fakatonutonu, ko e me'a 'e hoko 'i he taimi 'e 'ikai fakahoko ai 'e he taha fakatonutonu 'a hono fatongia, fokotu'u 'o ha taha fakatonutonu fetongi, mo e malu 'i 'o e kau fakatonutonu koe'uhi ko e ngaahi ngaue pe 'ikai fakahoko ngaue kuo hoko lolotonga honau fatongia ko e taha fakatonutonu.

Konga 5 'oku ne tu'utu'uni 'a e mafai 'o e fakamaau'anga fakatonutonu. 'Oku tuku atu 'e he kupu 19 mo e 20 'a e mafai ke tu'utu'uni 'i hono mafai pe 'o'ona mo e ngaahi mafai kehe felave 'i mo hono fakahoko 'o e ngaahi hopo fakatonutonu.

Konga 6 'oku ne fakaivia 'a e fakamaau'anga ke foaki ha ngaahi ngaue fakataimi pe tu'utu'uni teuteu, ngaahi tu'unga ki hono tali ha kole mo e ngaahi me'a kehe felave 'i mo ia. 'E ngofua ke kole ki he fakamaau'anga ha fa'ahi 'a ia na'e foaki ki ai ha ngaue fakataimi mo ha tu'utu'uni teuteu ki hono fakahoko ia. 'E malava ke kole 'a e fa'ahi fakafepaki ke tuku mavahe ia.

Konga 7 'oku ne tu'utu'uni ki hono fakahoko 'o e ngaahi hopo fakatonutonu. 'Oku 'i he kongani 'a e taha 'o e ngaahi kongani mahu'inga 'o ha fakatonutonu - 'a e malava ke felotoi 'a e ngaahi fa'ahi ki he kongani lahi 'o e ngaahi me'a fekau'aki mo e ngaahi hopo fakatonutonu. Kapau 'oku 'ikai ke 'i ai ha aleapau fekau'aki mo ha founa ngaue pehe 'e fakahoko 'e he fakamaau'anga 'a e ngaahi hopo 'i ha founa totonu.

Ko e tau'atina 'a e ngaahi fa'ahi ke felotoi ki hono fakahoko 'o e ngaahi hopo fakatonutonu 'oku kau ki ai, kae 'ikai fakangatangata ki he, fakama'opo'opo 'o e ngaahi hopo; fakafongia; feitu'u 'o e fakatonutonu; kamata'anga 'o e ngaahi hopo fakatonutonu; ngaahi fakamatala 'eke mo taukapo; ko e fa'ahinga 'o e hopo 'o tatau pe ko e ngaahi hopo 'oku fakahoko 'i he lea pe tohi; ko e 'ikai faipau ha fa'ahi; mataotao kuo fokotu'u 'e he fakamaau'anga fakatonutonu; ko e tu'utu'uni ki he felu'i fakalao teuteu; mo e tauhi ke malu.

Konga 8 'oku ngaue'aki ia ki he tu'utu'uni pe ko e tu'utu'uni 'a e taha fakatonutonu pe fakamaau'anga fakatonutonu. 'Oku aofangatuku 'a e tu'utu'uni ka 'e malava ke fakafepaki 'i 'e ha taha 'o e ongo fa'ahi 'i he Fakamaau'anga Lahi.

'E malava ke felotoi 'a e ngaahi fa'ahi ke fakalelei 'a e maumau. Kapau te nau fakahoko ia, 'e tamate'i 'e he fakamaau'anga 'a e ngaahi hopo pea 'e lau ko e tu'utu'uni 'a e aleapau fakalelei 'a e ngaahi fa'ahi.

'E malava ke fakakau atu 'e he fakamaau'anga 'a e totongi tupu 'i he tu'utu'uni 'o tanaki atu ki hono tu'utu'uni 'o e ngaahi fakamole 'o e fakatonutonu ki he fa'ahi 'oku ikuna.

'Oku tuku atu 'e he ngaahi kupu kehe 'i he kongani 'a e founa mo e ngaahi kakano 'o e tu'utu'uni, fakatonutonu mo hono faka'uhinga 'o e tu'utu'uni, mo e mafai 'o e fakamaau'anga ke fakahoko ha tu'utu'uni tanaki atu.

Konga 9 mo e 10 'oku ne tuku atu 'a e totonu 'a e ngaahi fa'ahi ke kole ki he fakamaau'anga ke fakata'e'aonga'i ha tu'utu'uni mo e fatongia 'o e ngaahi fakamaau'anga ke tali mo fakahoko ha tu'utu'uni. 'E ngofua foki ke 'ikai tali mo fakahoko 'e he fakamaau'anga ha tu'utu'uni 'o tu'unga 'i he ngaahi 'uhinga 'oku tuku atu 'i he kupu 60.

Konga 11 'oku tuku atu ai 'a e mafai fa'u tu'utu'uni 'a e Minisita.


Hon. Samu Kuita Vaipulu

Minisita 'o e Fefakatau'aki mo e Fakalakalaka Faka'ekonomika





Table Unit

No. 39/2020.



Tonga

**INTERNATIONAL ARBITRATION BILL
2020**

Table Unit

05/05/2020



Table Unit



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Table Unit

Ho. 39/2020.



INTERNATIONAL ARBITRATION BILL 2020

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

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;

- (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.

- (4) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

9 Arbitration agreement and substantive claim before court

- (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.
- (2) Where an action referred to in sub-section (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.
- (3) If the court refuses to refer the parties to arbitration, any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall have no effect in relation to those proceedings.
- (4) If the court refers the parties to arbitration under sub-section (1), it shall make an order staying the legal proceedings in that action.

10 Death, bankruptcy or winding up of party to arbitration agreement

- (1) Unless otherwise agreed by the parties, an arbitration agreement shall not be discharged by the death, bankruptcy or winding up of a party, and may be enforced by or against the representatives of that party.
- (2) Sub-section (1) does not affect the operation of any law under which the death of a person extinguishes a cause of action.

11 Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

PART 4 – COMPOSITION OF ARBITRAL TRIBUNAL

12 Number of arbitrators

The parties are free to determine the number of arbitrators and failing such determination, the number of arbitrators shall be three.

13 Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on rules of procedure in appointing the arbitrator or arbitrators, subject to the provisions of sub-sections (4) and (5).
- (3) When failing to agree under sub-section (2) –
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator;
 - (b) if a party fails to appoint the arbitrator under sub-paragraph (a) within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority; and
 - (c) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority.
- (4) Where, under an appointment rules of procedure agreed upon by the parties –
 - (a) a party fails to act as required under such procedure; or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,any party may request the court or other authority to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (5) The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

- (6) A decision on a matter in sub-section (4) or (5) of this section to the court or other authority specified in this section shall be subject to no appeal.

14 Grounds for challenge

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- (2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.
- (3) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator appointed by him, or in whose appointment that party has participated, only for reasons of which he becomes aware after the appointment has been made.

15 Challenge procedure

- (1) The parties are free to agree on a procedure for challenging an arbitrator, subject to sub-section (3).
- (2) Failing an agreement under sub-section (1), a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 14 (3) and (4), send a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (4) If a challenge under any procedure agreed upon by the parties or under the procedure of sub-sections (2) and (3) is not successful, the challenging party may request, within 30 days after having received notice of the decision rejecting the challenge, the court to decide on the challenge, which decision shall be subject to no appeal, while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

16 Failure or impossibility to act

- (1) If an arbitrator becomes unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination.

- (2) If the matter is not resolved under sub-section (1), any party may request the court to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (3) If, under this section or section 15 (3), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this section or section 14.

17 Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under section 15 or 16 –

- (a) because of his withdrawal from office for any other reason;
- (b) because of the revocation of his mandate by agreement of the parties; or
- (c) in any other case of termination of his mandate;

a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

18 Immunity of arbitrator

- (1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith.
- (2) Sub-section (1) applies to an employee or agent of an arbitrator as it applies to the arbitrator himself.
- (3) This section does not affect any liability incurred by an arbitrator by reason of his resigning.

PART 5 – JURISDICTION OF ARBITRAL TRIBUNAL

19 Competence of arbitral tribunal to rule on its own jurisdiction

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- (2) For the purpose of sub-section (1), an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.
- (3) A decision by the arbitral tribunal that the contract is null and void shall not entail the invalidity of the arbitration clause.
- (4) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.

- (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.

34 Representation in arbitral proceedings

Unless otherwise agreed by the parties, a party may appear in person before an arbitral tribunal and may be represented by —

- (a) himself; or
- (b) any other person of that party's choice.

35 Determination of rules of procedure

- (1) Subject to this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may, subject to this Act, conduct the arbitration in such manner as it considers appropriate.
- (3) The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

36 Place of arbitration

- (1) The parties are free to agree on the place of arbitration.
- (2) Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (3) Notwithstanding the provisions of sub-section (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

37 Commencement of arbitral proceedings

- (1) Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent but before the expiration of five years from the date on which the cause of action accrued.
- (2) In computing the said period, the period of any previous arbitral proceedings arising from the same arbitration agreement and concerning the same dispute or disputes under that agreement, in respect of which an award has been set aside under this Act, shall be disregarded.

38 Language

The parties shall be free to agree on the language or languages to be used in the arbitral proceedings.

39 Statements of claim and defence

- (1) The claimant shall submit his statement of claim within the agreed period of time or as determined by the arbitral tribunal.
- (2) The statement of claim shall state -
 - (a) the facts supporting his claim;
 - (b) the points at issue; and
 - (c) the relief sought.
- (3) The respondent shall state his defence in respect of the particulars within the agreed period of time or as determined by the arbitral tribunal, unless the parties have otherwise agreed to the required elements of such statements.
- (4) The parties may submit additional documents they consider to be relevant.
- (5) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

40 Hearings and written proceedings

- (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.
- (2) Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- (3) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (4) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party.
- (5) Subject to section 42, any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

41 Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause –

- (a) the claimant fails to communicate his statement of claim in accordance with section 39(1)-(4), the arbitral tribunal shall terminate the proceedings;

- (b) the respondent fails to communicate his statement of defence in accordance with section 39(1)-(4), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations; or
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

42 Expert appointed by the arbitral tribunal

- (1) Unless otherwise agreed by the parties, the arbitral tribunal –
 - (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
 - (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

43 Court assistance in taking evidence

- (1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the court assistance in taking evidence.
- (2) The court may execute the request according to its rules on taking evidence.
- (3) For the purposes of sub-sections (1) and (2), the court may –
 - (a) make an order of subpoena to compel the attendance of a witness before an arbitral tribunal to give evidence or produce documents; or
 - (b) order any witness to submit to examination on oath or affirmation before the arbitral tribunal, or before an officer of the court, or any other person for the use of the arbitral tribunal.

44 Determination of preliminary point of law

- (1) Unless otherwise agreed by the parties, the court may on the application of a party to arbitral proceedings, upon notice to the other parties, determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties.
- (2) An application under this section shall not be considered unless—

- (a) it is made with the agreement of all the other parties to the proceedings; or
- (b) it is made with the permission of the arbitral tribunal and the court is satisfied—
 - (i) that the determination of the question is likely to produce substantial savings in costs; and
 - (ii) that the application was made without delay.
- (3) The application shall identify the question of law to be determined and, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.
- (4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.
- (5) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in sub-section (2) are met.
- (6) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal but no appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance, or is one which for some other special reason should be considered by the Court of Appeal.

45 Confidentiality

- (1) Unless otherwise agreed by the parties, all documents and matters relating to the arbitration shall be confidential and no party may publish, disclose or communicate any information relating to –
 - (a) the arbitration proceedings; or
 - (b) any awards in the arbitration.
- (2) Nothing in sub-section (1) prevents the publication, disclosure or communication of information referred to in that sub-section by a party if the publication, disclosure or communication is made –
 - (a) to protect or pursue a legal right or interest of the party;
 - (b) to enforce or challenge the award referred to in that sub-section, in legal proceedings before a court or other judicial authority in or outside Tonga;
 - (c) to any government body, regulatory body, court or tribunal and the party is obliged by law to make the publication, disclosure or communication;
 - (d) pursuant to an order made by the arbitral tribunal, allowing a party to do so and such an order may only be made at the request of a party, and after giving each of the parties an opportunity to be heard; or
 - (e) to a professional or any other adviser of any of the parties.

PART 8 – MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

46 Rules applicable to substance of dispute

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.
- (2) Any designation of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules.
- (3) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (4) The arbitral tribunal shall decide on what is fair and right only if the parties have expressly authorised it to do so.
- (5) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.
- (6) The arbitral tribunal may award any remedy or relief that could have been ordered by the court if the dispute had been the subject of civil proceedings in that court.

47 Decision-making by panel of arbitrators

- (1) If there is more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members.
- (2) Questions on rules of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

48 Settlement

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of section 51 and shall state that it is an award.
- (3) An award made under this section has the same status and effect as any other award on the merits of the case.

49 Interest up to making of award

- (1) Where an arbitral tribunal determines to make an award for the payment of money, whether on a claim for a liquidated or an unliquidated amount, the tribunal may, subject to sub-section (2), include in the sum for which the award is made, interest at such reasonable rate as the tribunal determines on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
- (2) Sub-section (1) does not –
 - (a) authorise the awarding of interest upon interest;
 - (b) apply in relation to any amount upon which interest is payable as of right whether by virtue of an agreement or otherwise; or
 - (c) affect the damages recoverable for the dishonour of a bill of exchange.

50 Interest on debt under award

- (1) This section applies if –
 - (a) an arbitral tribunal makes an award for the payment of an amount of money; and
 - (b) under the award, the amount is to be paid by a due date.
- (2) The arbitral tribunal may direct that interest, including compound interest, is payable if the amount is not paid on or before the due date.
- (3) The arbitral tribunal may set a reasonable rate of interest.
- (4) The interest is payable –
 - (a) from the day immediately following the due date; and
 - (b) on so much of the amount as remains unpaid.
- (5) The direction is taken to form part of the award.

51 Form and contents of award

- (1) The award shall be made in writing, signed by the arbitrator or arbitrators and delivered to each party.
- (2) If there is more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (3) The award shall state –
 - (a) the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 48; and

- (b) its date and the place of arbitration.
- (4) This section shall apply to a correction or an interpretation of an award under section 53 or to an additional award under section 54.

52 Termination of proceedings

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with sub-section (2).
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when –
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings; or
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to sections 53, 54 and 58 (4).

53 Correction and interpretation of award

- (1) A party may request the arbitral tribunal within 30 days of receipt of an award, unless otherwise agreed by the parties, to –
 - (a) correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature; or
 - (b) give an interpretation of a specific point or part of the award.
- (2) A party making a request under sub-section (1) must notify the other party of the request.
- (3) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request.
- (4) An interpretation given under sub-section 3 shall form part of the award.
- (5) The arbitral tribunal may correct any error of the type referred to in sub-section (1)(a) on its own initiative within 30 days of the date of the award.
- (6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction or an interpretation.

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

- (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) if 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 recognition or enforcement of the award would be contrary to public policy in Tonga.
- (2) If an application for setting aside or suspension of an award has been made to a court referred to in sub-section (1)(a)(v), the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

61 Evidence of awards and arbitration agreements

- (1) In any proceedings in which a party seeks the enforcement of an award by virtue of this Part, he shall produce to the court –
 - (a) the duly authenticated original award or a duly certified copy; and
 - (b) the original arbitration agreement under which the award purports to have been made or a duly certified copy.
- (2) For the purpose of sub-section (1), an award shall be deemed to have been duly authenticated, and a copy of an award or agreement shall be deemed to have been duly certified, if –
 - (a) it purports to have been authenticated or certified, as the case may be, by the arbitrator or, where the arbitrator is a tribunal, by an officer of that tribunal, and it has not been shown to the court that it was not in fact so authenticated or certified; or
 - (b) it has been otherwise authenticated or certified to the satisfaction of the court.
- (3) If a document or part of a document produced under sub-section (1) is written in a language other than English, there shall be produced with the document a translation, in the English language, of the document or that part, as the case may be, certified to be a correct translation.
- (4) For the purposes of sub-section (3), a translation shall be certified by a diplomatic or consular agent to Tonga of the country in which the award was made or otherwise to the satisfaction of the court.
- (5) A document produced to a court in accordance with this section is, upon mere production, receivable by the court as prima facie evidence of the matters to which it relates.

PART 11 – MISCELLANEOUS

62 Regulations

The Minister may with the consent of Cabinet make regulations for the proper and efficient administration of this Act.

Passed by the Legislative Assembly on day of 2020.

Table Unit

SCHEDULE**Convention on the Recognition and Enforcement of Foreign Arbitral Awards
(1958)****Article I**

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.
2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially

more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
 - (a) The duly authenticated original award or a duly certified copy thereof;
 - (b) The original agreement referred to in article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
 - (a) The parties to the agreement referred to in article II were, under the law applicable to them, 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; or
 - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (c) The award deals with a difference 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 recognized and enforced; or
 - (d) The composition of the arbitral authority 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

- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
- 2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that –
 - (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
 - (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

- 1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
- 2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

- 1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.
- 2. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply –

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
- (c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.
3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following-

- (a) Signatures and ratifications in accordance with article VIII;
- (b) Accessions in accordance with article IX;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accordance with article XII;
- (e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

EXPLANATORY NOTES

(These notes does not form part of the Bill, and are only intended to explain its scope and purpose)

This Bill provides for the resolution of international commercial disputes by arbitration, the recognition and enforcement of arbitral awards and related matters. The main benefits of arbitration are described below –

There are several differences between arbitration and litigation. The first is that the parties to an arbitration choose their own decision maker or arbitrator. Frequently the arbitrator is familiar with technical aspects relevant to the dispute or has specialised knowledge which relates to the subject matter of the dispute. The dispute will often be disposed of more quickly by arbitration than through court processes. An arbitration can normally be heard sooner than it takes to get a case to court. Arbitration is private whereas court proceedings generally are not. Arbitration need not be as formal as a court hearing. Although is an arbitration the parties will have to bear the cost of the arbitral tribunal, with recent significant increases in court fees the difference may not be great.¹

The Bill is intended to give effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) acceded to by the Kingdom of Tonga on 12 June 2020. Most of the provisions of this Bill are taken from the UNCITRAL² Model Law on International Commercial Arbitration.³ Other provisions are taken from the arbitration legislation of the United Kingdom, Australia and New Zealand.

The Bill has 11 main parts. General descriptions of each part are as follows –

Part 1 contains standard provisions of an Act, namely the short title, the commencement date, interpretation of certain terms and binding effect of the Bill on the Crown.

Part 2 contains general provisions of the Bill. Section 4 provides that the Act applies to international commercial arbitration and defines what constitutes an international arbitration. Section 5 sets out the purposes of the Bill alluded to above.

Part 3 defines an arbitration agreement and what happens when a matter which is the subject of an arbitration agreement is brought before the courts. Section 10 provides that an arbitration agreement is not discharged by the death, bankruptcy or winding up of a party.

Part 4 provides for the composition of an arbitral tribunal. The parties to an arbitration agreement can agree to the number of arbitrators otherwise section 12 provides that the number of arbitrators shall be three. Subsequent sections set out how the three

¹ Arbitrators' and Mediators' Institute of New Zealand Inc., (2004) *Guide to Arbitration*, 1, at https://www.aminz.org.nz/Folder?Action=View%20File&Folder_id=4&File=Guide%20to%20Arbitration.pdf (accessed 2 October 2020).

² United Nations Commission on International Trade Law.

³ The UNCITRAL Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006).

arbitrators are to be appointed, the grounds and procedure for challenging an arbitrator, what happens when an arbitrator fails to perform his role, appointment of a substitute arbitrator, and the immunity of arbitrators for actions or omissions done during their role as an arbitrator.

Part 5 provides for the jurisdiction of the arbitral tribunal. Sections 19 and 20 give the arbitral tribunal the power to rule on its own jurisdiction and other powers relating to the conduct of arbitral proceedings.

Part 6 empowers the tribunal to grant an interim measure or a preliminary order, the conditions for granting an application and other related matters. The party to whom an interim measure and a preliminary order was granted may apply to the court for enforcement. The opposing party can apply to set them aside.

Part 7 provides for the conduct of arbitral proceedings. This part contains one of the important features of arbitration – that the parties can agree most aspects of the arbitral proceedings. If there is no agreement on such a procedure the tribunal will conduct the proceedings in an appropriate manner.

The parties' freedom to agree on the conduct of arbitral proceedings extends, but not limited to, the consolidation of proceedings; representation; place of arbitration; commencement of the arbitral proceedings; statements of claim and defence; the type of hearing whether oral or written proceedings; default of a party; expert appointed by the arbitral tribunal; determination of preliminary point of law; and confidentiality.

Part 8 deals with the decision or the 'award' of the arbitrator or arbitral tribunal. The award is final but can be challenged by either party in the Supreme Court.

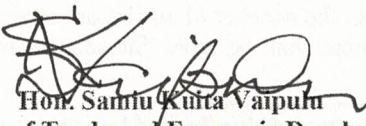
The parties can agree to settle the dispute. If they do, the tribunal will terminate the proceedings and the parties' settlement agreement will be deemed an award.

The tribunal can include interest in the award in addition to awarding costs of the arbitration to the successful party.

Other provisions in this part provide for the form and contents of award, correction and interpretation of award, and the power of the tribunal to make an additional award.

Parts 9 and 10 provide for the right of the parties to apply to the court to set aside an award and the obligation of the courts to recognise and enforce an award. The court may also refuse to recognise and enforce an award on the grounds set out in section 60.

Part 11 provides for the regulations-making power of the Minister.


Hon. Sami Kuita Vaipulu
Minister of Trade and Economic Development

