



SAMOA

ARBITRATION ACT 1976

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ARBITRATION ACT 1976

1976

No.9

AN ACT to consolidate the law relating to arbitration.

(Assent and commencement date: 23 August 1976)

PART 1 GENERAL

1. Short title – This Act may be cited as the Arbitration Act 1976.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“arbitrator” includes referee or valuer;

“authority” includes the Court;

“Court” means the Supreme Court, and includes a Judge of the Supreme Court;

“rules of Court” means rules of the Supreme Court, made by the proper authority under this Act;

“submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not, or under which any question or matter is to be decided by one or more persons to be appointed by the contracting parties or by some person named in the agreement.

(2) References in this Act to an award are taken to include references to an interim award.

3. Act to bind Government – This Act applies to an arbitration to which the Government is a party; but nothing in this Act empowers the Court to order any proceedings to which the Government is a party, or a question or issue in any such proceedings, to be tried before an arbitrator or officer without the consent of the Attorney General.

4. Power to make rules – Rules may be made in the manner prescribed by the Judicature Ordinance 1961 for the purpose of giving effect to this Act in the Court.

5. Submission to be irrevocable and non-dischargeable by death – (1) A submission, unless a contrary intention is

expressed therein, is irrevocable, except by leave of the Court, and has the same effect in all respects as if made an order of Court.

(2) A submission is not discharged by the death of a party thereto, either as respects the deceased or any other party, but is, in such an event, enforceable by or against the personal representative of the deceased.

(3) The authority of an arbitrator is not revoked by the death of a party by whom the arbitrator was appointed.

(4) Nothing in this section affects the operation of an enactment or rule of law by virtue of which a right of action is extinguished by the death of a person.

6. Provisions implied in submissions – A submission, unless a contrary intention is expressed therein, is taken to include the provisions specified in Schedule 1, so far as they are applicable to the reference under the submission.

7. Power of Court to stay proceedings where there is a submission – (1) If a party to a submission, or a person claiming through or under the party, commences any legal proceedings in a Court against any other party to the submission, or a person claiming through or under the party, in respect of a matter agreed to be referred, a party to those legal proceedings may, at any time before filing a statement of defence or a notice of intention to defend or taking any other step in the proceedings, apply to the Court in which the proceedings were commenced to stay the proceedings; and that Court may, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, make an order staying the proceedings.

(2) The refusal by an inferior Court of an application for a stay of proceedings under this section in an action does not affect the right of the defendant in the action to have the action transferred to the Supreme Court.

8. Appointment of arbitrator or umpire – (1) In any of the following cases:

- (a) where a submission provides that the reference is to a single arbitrator, and all the parties do not concur in the appointment of an arbitrator; or
- (b) where an appointed arbitrator fails to act, or is or becomes incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy; or
- (c) where the parties or 2 arbitrators are at liberty to appoint an umpire or a third arbitrator or where 2 arbitrators are required to appoint an umpire and do not appoint 1; or
- (d) where an appointed umpire or third arbitrator fails to act, or is or becomes incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,—

a party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire or a third arbitrator.

(2) If the appointment is not made within 7 days after the service of the notice, the Court may, on application by the party who gave the notice, appoint an arbitrator or umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he or she had been appointed by consent of all parties.

9. Power for parties to supply vacancies – (1) If a submission provides that the reference requires 2 arbitrators, 1 to be appointed by each party, then, unless the submission expresses a contrary intention:

- (a) if either of the appointed arbitrators fails to act, or is or becomes incapable of acting; or dies, the party who appointed the arbitrator may appoint a new arbitrator in his or her place; and
- (b) if 1 party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for 7 days after the other party, having appointed his or her arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in

the reference, and the arbitrator's award is binding on both parties as if he or she had been appointed by consent.

(2) The Court may set aside an appointment made under this section.

10. Power of arbitrator to administer oaths and make corrections – An arbitrator or umpire acting under a submission may administer oaths to the parties and witnesses appearing and correct in an award a clerical mistake or error arising from an accidental slip or omission.

11. Witnesses may be summonsed – A party to a submission may issue a summons compelling a person to testify or a summons compelling the production of a document, but no person is to be compelled under the summons to produce a document which the person could not be compelled to produce on the trial of an action.

12. Arbitrator or umpire entitled to remuneration – An arbitrator or umpire is entitled to a reasonable remuneration for his or her services as the arbitrator or umpire, and if the parties to the submission do not agree as to the amount to be paid, or as to the mode and time of payment, the Court may, on an application for that purpose, fix and determine all or any of such matters.

13. Power to remove arbitrator or set aside award – (1) If an arbitrator or umpire has misconducted himself or herself or the proceedings the Court may remove that arbitrator.

(2) If an arbitrator or umpire has misconducted himself or herself or the proceedings or an arbitration or award has been improperly procured, the Court may set the award aside.

(3) The Court may remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

(4) An arbitrator or umpire who is removed by the Court under this section is not entitled to receive remuneration in respect of his or her services.

(5) Subject to section 27(2) and to anything to the contrary in the submission, an arbitrator or umpire has power to make an award at any time.

(6) In this section, “proceeding with a reference” includes, in a case where 2 arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

14. Power of Court where arbitrator is removed or appointment of arbitrator is revoked – (1) If an arbitrator (not being a sole arbitrator) or 2 or more arbitrators (not being all the arbitrators) or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of a party to the submission, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) If the appointment of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of a party to the submission, either:

- (a) appoint a person to act as sole arbitrator in place of the person or persons removed; or
- (b) order that the submission cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court as an arbitrator or umpire has the like power to act in the reference and to make an award as if the person had been appointed under the terms of the submission.

(4) If it is provided (whether by means of a provision in the submission or otherwise) that an award under a submission is a condition precedent to the bringing of an action on a matter to which the submission applies, the Court, if it orders (whether under this section or under any other enactment) that the submission shall cease to have effect as regards to a particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

15. Review of arbitrator’s or umpire’s fees – (1) If in any case an arbitrator or umpire refuses to deliver his or her award except on payment of the fees demanded by the arbitrator, the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and further that the fees demanded shall be reviewed by the Registrar of the Court and that of the money paid into Court

there shall be paid into Court there shall be paid out to the arbitrator or umpire by way of fees any sum as may be found reasonable on review and that the balance of the money (if any) shall be paid out to the applicant.

(2) An application for the purposes of this section may be made by a party to the reference unless the fees demanded have been fixed by a written agreement between the party and the arbitrator or umpire.

(3) The arbitrator or umpire is entitled to appear and be heard on a review of fees under this section.

16. Power of Court to give relief where arbitrator is not impartial or dispute referred involves question of fraud –

(1) If an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement and after a dispute has arisen a party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the submission or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it is not a ground for refusing the application that the party at the time when he or she made the agreement knew, or ought to have known, that the arbitrator by reason of his or her relation towards any other party to the agreement or of his or her connection with the subject referred might not be capable of impartiality.

(2) If an agreement between any parties provides that disputes which may arise in the future between them shall be referred and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke a submission made thereunder.

(3) If, by virtue of this section, the Court has power to order that an agreement shall cease to have effect or to give leave to revoke a submission, the Court may refuse to stay an action brought in breach of the agreement.

17. Provisions on the appointment of 3 arbitrators – (1)

If a submission provides that the reference shall be to 3 arbitrators, 1 to be appointed by each party and the third to be appointed by the 2 arbitrators appointed by the parties, the

submission shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the 2 arbitrators appointed by the parties.

(2) If a submission provides that the reference shall be to 3 arbitrators to be appointed otherwise than as mentioned in subsection (1), the award of any 2 of the arbitrators is binding.

(3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of a party to the reference and despite anything to the contrary in the submission, order that the umpire shall enter on the reference in lieu of the arbitrators and as if he or she were a sole arbitrator.

18. Additional powers of Court – The Court has, for the purpose of and in relation to a reference, the same power of making orders on any of the matters set out in Schedule 2, as it has for the purpose of and in relation to an action or matter in the Court:

PROVIDED that nothing in the foregoing provision prejudices a power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

19. Power to refer in certain cases – (1) In any cause or matter (other than a criminal proceeding by the Government):

- (a) if all the parties interested who are not under disability consent; or
- (b) if the question in dispute consists wholly or in part of matters of account; or
- (c) if the cause or matter requires a prolonged examination of documents, or a scientific or local investigation, which cannot in the opinion of the Court or a Judge conveniently be made or conducted by the Court through its other ordinary officers, –

the Court may order the whole cause or matter, or a question or issue of fact arising therein, to be tried before an arbitrator agreed on by the parties, or before an officer of the Court.

(2) In all cases of reference to an arbitrator under an order of the Court in any cause or matter, the arbitrator is taken to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as is prescribed by rules of Court, and subject thereto, as the Court directs.

20. Statement of case by arbitrator or umpire – (1) An arbitrator or umpire may, and shall if so directed by the Court, state:

- (a) a question of law arising in the course of the reference; or
 - (b) an award or a part of an award,–
- in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, although proceedings under the reference are still pending.

(3) A decision of the Court under this section is taken to be a judgment of the Court, but no appeal shall lie from the decision of the Court on a case stated under subsection (1)(a) without the leave of the Court.

PART 2 FOREIGN AWARDS

21. Effect of foreign awards – (1) A foreign award shall, subject to this Part, be enforceable in Samoa either by action or in the same manner as a judgment or order to the same effect.

(2) A foreign award which would be enforceable under this Part:

- (a) is treated as binding for all purposes on the persons as between whom it was made; and
 - (b) may be relied on by any of those persons by way of defence, set off, or otherwise in any legal proceedings in Samoa,–
- and any references in this Part to enforcing a foreign award is construed as including references to relying on an award.

22. Conditions for enforcement of foreign awards – (1) In order that a foreign award may be enforceable under this Part it shall:

- (a) be made under an agreement for arbitration which was valid under the law by which it was governed;
- (b) be made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;
- (c) be made in conformity with the law governing the arbitration procedure;

(d) become final in the country in which it was made;
(e) be in respect of a matter which may lawfully be referred to arbitration under the law of Samoa, –
and the enforcement thereof must not be contrary to the public policy or the law of Samoa.

(2) Subject to this subsection, a foreign award is not enforceable under this Part if the Court dealing with the case is satisfied that:

- (a) the award has been annulled in the country in which it was made; or
- (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable that party to present his or her case, or was under some legal incapacity and was not properly represented; or
- (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:

PROVIDED that, if the award does not deal with all the questions referred, the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is a ground other than the non-existence of the conditions specified in subsection (1)(a), (b) or (c), or the existence of the conditions specified in subsection (2)(b) and (c), entitling the party to contest the validity of the award, the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

23. Evidence – (1) The party seeking to enforce a foreign award must produce:

- (a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made; and
- (b) evidence proving that the award has become final; and

- (c) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in section 22(1)(a), (b) and (c) are satisfied.

(2) If a document required to be produced under subsection (1) is in a foreign language, the party seeking to enforce the award shall produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of Samoa.

(3) Subject to this section, rules of Court may be made under the Judicature Ordinance 1961 with respect to the evidence which must be provided by a party seeking to enforce an award under this Part.

24. Meaning of “final award” – For the purposes of this Part, an award is taken not to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

25. Saving – Nothing in this Part:

- (a) prejudices any rights which a person would have had of enforcing in Samoa an award or of availing himself or herself in Samoa of an award if this Part had not been enacted; or
- (b) applies to an award made on an arbitration agreement governed by the law of Samoa.

PART 3 MISCELLANEOUS

26. Power to enlarge time for making award – The time for making an award may be enlarged by order of the Court, whether the time for making the award has expired or not.

27. Power to remit award – (1) In all cases of reference to arbitration, the Court may remit the matters referred, or any of them, to the reconsideration of the arbitrator or umpire.

(2) If an award is remitted, the arbitrator or umpire shall, unless the order otherwise directs, make the award within 3 months after the date of order.

28. Enforcing award – An award on a submission may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect; and judgment may be entered in terms of the award.

29. Interest on awards – A sum directed to be paid by an award, unless the award otherwise directs, carries interest as from the date of the award and at the same rate as a judgment debt.

30. Limitation of time for commencing arbitration proceedings – Where:

- (a) the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies are to be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement; and
- (b) a dispute arises to which the agreement applies,–
the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and even if the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, but without prejudice to the foregoing provisions of this section, extend the time for such period as it thinks proper.

31. Provisions in case of bankruptcy – (1) If it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connection therewith is referred to arbitration, the term shall, if the Official Assignee adopts the contract, be enforceable by or against him or her so far as relates to any such differences.

(2) If a person who has been adjudged bankrupt had before the commencement of the bankruptcy becomes a party to a submission and any matter to which the submission applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) does not apply, any other party to the submission or the Official Assignee may apply to the Court having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question is referred to arbitration in accordance with the submission, and that Court may, if it is of opinion that, having

regard to all the circumstances of the case, the matter ought to be determined by arbitration, made an order accordingly.

32. Costs – An order made under this Act may be made on any terms as to costs, or otherwise, as the authority making the order thinks just.

33. Repeal and saving – (1) To the extent that they form part of the law of Samoa, the enactments set out in Schedule 3 are repealed.

(2) The repeal of those enactments do not affect a document, proceedings, submission, reference, appointment, or other act or thing done under the provisions so repealed, and every such document, proceedings, submission, reference, appointment, act or thing, so far as it subsists at the time of repeal, continues to have effect as if it had been made or done under the corresponding provisions of this Act.

SCHEDULE 1 **(Section 6)**

PROVISIONS TO BE IMPLIED IN SUBMISSIONS

1. If no other mode of reference is provided, the reference shall be to a single arbitrator.
2. If the reference is to 2 arbitrators shall appoint an umpire immediately after they are themselves appointed.
3. If the arbitrators have delivered to a party to the submission, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
4. The parties to the reference, and all persons claiming through them respectively, shall, subject to a legal objection, submit to be examined by the arbitrators or umpire on oath in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, or documents within their possession or power that may be required or called for, and do all such other things as during the proceedings on the reference the arbitrators or umpire may require.
5. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath.
6. The award made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them

- respectively.
7. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what amount those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.
 8. The arbitrators or umpire shall have the same power as the Court to order specific performance of any contract other than a contract relating to land or any interest in land.
 9. The arbitrators or umpire may, if they think fit, make an interim award.

SCHEDULE 2
(Section 18)

MATTERS IN RESPECT OF
WHICH THE COURT MAY MAKE ORDERS

1. Security for costs.
2. Discovery of documents and interrogatories.
3. The giving of evidence by affidavit.
4. Examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of a jurisdiction.
5. The preservation, interim custody, or sale of any goods which are the subject matter of the reference.
6. Securing the amount in dispute in the reference.
7. The detention, preservation, or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence.
8. Interim injunctions or the appointment of a receiver.
9. The payment into Court or otherwise securing of any money made payable by an award where application is made to set the award aside.

SCHEDULE 3

Section 33(1)

ENACTMENTS REPEALED

- 1908 - No. 8 : The Arbitration Act 1908 (New Zealand).
- 1915 - No.13 : The Arbitration Amendment Act 1915 (New Zealand).
- 1933 - No. 4 : The Arbitration Clauses (Protocol) and Arbitration (Foreign Awards) Act 1933 (New Zealand).
- 1938 - No. 6 : The Arbitration Amendment Act 1938 (New Zealand).
- 1952 - No.27 : The Arbitration Amendment Act 1952 (New Zealand).
- 1957 - No.44 : The Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Amendment Act 1957.

REVISION NOTES 2008 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2008 – 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;
- (b) Amendments have been made to up-date references to offices, officers and statutes;
- (c) Insertion of the commencement date;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General;
 - (i) “shall be” changed to “is” and “shall be deemed” changed to “is taken”;
 - (ii) “shall have” changed to “has”;
 - (iii) “shall be guilty” changed to “commits”;
 - (iv) “notwithstanding” changed to “despite”;
 - (v) “it shall be lawful” changed to “may”;
 - (vi) “it shall be the duty” changed to “shall”;
 - (vii) Numbers in words changed to figures;
 - (viii) “hereby” and “from time to time” (or “at any time”) removed;
 - (ix) Removed “etc.” and provided complete sentences;
 - (x) Sections divided into paragraphs, 21(2).

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Justice and Courts Administration.*
