

CIVIL ARBITRATION RULES

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1 Name

These are the Civil Arbitration Rules 2004.

2 Interpretation

In these Rules —

“arbitration agreement” means an agreement —

- (i) to submit a civil dispute to arbitration; or
- (ii) by which any matter is to be decided by a person who is named in the agreement or who will be appointed by the parties;

“award” means a decision by an arbitrator or umpire;

“Commissioner” means a Commissioner appointed under section 5 of the Tokelau Amendment Act 1986 or a person exercising the functions, duties and powers of a Commissioner under section 6 of the Tokelau Amendment Act 1986;

“Court” means the High Court of New Zealand exercising jurisdiction for Tokelau under the Tokelau Amendment Act 1986, section 3.

3 Terms implied in arbitration agreement

- (1) Parties to a civil dispute may agree to settle the dispute by arbitration.
- (2) Unless a contrary intention is expressed in an arbitration agreement rules 4, 6, 7, 10, 12 and 13 apply to the arbitration.

4 Appointment of arbitrator and umpire

- (1) (i) An arbitration shall be by a single arbitrator.
- (ii) Where there is express provision for the appointment of two arbitrators, the two arbitrators must appoint an umpire as soon as reasonably practicable.

- (iii) Where arbitrators are unable to agree on an award and have given written notice of the fact to any party to the arbitration agreement or to the umpire, the umpire must settle the matter.
- (2) Where —
- (i) an arbitration agreement provides for a single arbitrator, and the parties do not agree on the person to appoint;
 - (ii) an arbitration agreement provides for two arbitrators, one to be appointed by each party, and one party fails to appoint an arbitrator;
 - (iii) an appointed arbitrator or umpire fails to act, or is incapable of acting, or is removed under rule 11(1),
- any party to the arbitration agreement may request the other party or the arbitrators, as the case may be, by written notice, to appoint an arbitrator or umpire or another arbitrator or umpire.
- (3) If the appointment requested under paragraph (2) is not made within 7 days after the service of the notice, the Commissioner or the Court may, on application by the party who gave the notice, appoint the arbitrator or umpire required.

5 Commissioner or Court may refer matter to arbitration

The Commissioner or the Court may, with the consent of the parties to a dispute before the Commissioner or the Court, refer to arbitration —

- (i) the final determination of the dispute, or
 - (ii) of all matters in dispute between the parties,
- on such terms and with such directions as to the appointment of an arbitrator and other things as the Commissioner or the Court thinks fit.

6 Evidence and procedure

- (1) An arbitrator or umpire who acts under an arbitration agreement or by appointment under rule 5 may administer oaths and affirmations.
- (2) The parties to an arbitration must —
- (i) as required, produce, to an arbitrator or umpire all relevant documents within their possession or power; and
 - (ii) do everything else the arbitrator or umpire reasonably requires of them.

7 Time for making award

The time for making an award may be changed by agreement of the parties or by order of the Commissioner whether the time for making the order has expired or not.

8 Statement of case

An arbitrator or umpire may at any stage of an arbitration state a case for the opinion of the Court on a question of law which arises in the course of arbitration.

9 Stay of proceedings

(1) If a party to an arbitration agreement commences legal proceedings against another party to the arbitration agreement in respect of a matter to be decided by the arbitration, any party to the proceedings may apply to the Court to stay the proceedings.

(2) The Court to which the application is made under paragraph (1) may stay the proceedings if it is satisfied that —

- (i) there is no good reason why the matter should not be decided in accordance with the arbitration agreement; and
- (ii) the applicant was, at the time the proceedings were commenced and still remains, ready to do all that is necessary for the proper conduct of the arbitration.

10 Award

(1) When an award has been made, the arbitrator or umpire as the case may be, must sign it and given notice to the parties of —

- (i) the fact that the award has been made and signed;
- (ii) the amount of the fees and charges payable in respect of the arbitration.

(2) (i) An arbitrator or umpire must, at the request of a party to the arbitration agreement, and on payment of the fees and charges due in respect of the arbitration, file the award or a certified copy of the award in Court.

(ii) Notice that the award has been filed must be given by an arbitrator or umpire to the parties.

- (3) Unless the award directs otherwise, any sum directed to be paid by an award carries interest —
 - (i) from the date of the award;
 - (ii) at the current rate of interest payable on personal accounts in the Tokelau Savings System.
- (4) An arbitrator or umpire may make an interim award.
- (5) Subject to rule 11(2), an award is final and binding on the parties.
- (6) An award may, by order of the Commissioner or the Court, be enforced in the same manner as a judgment to the same effect.

11 Removal of arbitrator

- (1) The Court may remove an arbitrator or umpire who acts improperly in the conduct of the arbitration.
- (2) The Court may set aside an award where an arbitrator has acted improperly in the conduct of the arbitration or where an award has been improperly procured.
- (3) An arbitrator or umpire who is removed under this regulation is not entitled to receive remuneration.

12 Remuneration

- (1) Subject to rule 11(3), an arbitrator or umpire is entitled to reasonable remuneration for services as arbitrator or umpire.
- (2) If the parties do not agree as to the amount or time of payment, the Court may determine these matters.

13 Costs

The arbitrator or umpire, as the case may be, shall fix the costs of the arbitration and award, and direct to whom, by whom, and in what amount the fees and charges must be paid.

14 Repeal

[Spent]
